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

Guangdongsheng Shunhechuanmei Co., Ltd., Plaintiff, v. THE PARTNERSHIPS and UNINCORPORATED ASSOCIATIONS IDENTIFIED ON SCHEDULE "A", Defendants.	Case No. 25-CV-1716 Hon. Jeffrey I Cummings Mag. Jeannice W. Appenteng

MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR ENTRY OF DEFAULT JUDGMENT AGAINST DEFENDANTS IDENTIFIED IN LIST OF DEFAULTING DEFENDANTS

Plaintiff Guangdongsheng Shunhechuanmei Co., Ltd. ("Shunhechuanmei" or "Plaintiff") submits this Memorandum in support of its Motion for Entry of Default and Default Judgment under Fed. R. Civ. P. 55 against Certain Defendants identified in the List of Defaulting Defendant attached hereto as Exh. 1 (collectively, the "Defaulting Defendants") that have not been already dismissed from this case. All Defaulting Defendants have been served in accordance with the Court's Order and have yet to file an answer in this matter. All remaining Defendants in this matter are in default – all non-

defaulting Defendants have been dismissed prior to the filing of this motion. None of the remaining Defendants are believed to be members of the United States military.

Shunhechuanmei designs, manufactures and distributes consumer products, such as metal nibbler drill attachment (the "Shunhechuanmei Products"). Dec. Wei Gao, ¶ 5 [Dkt. No. 9]. Shunhechuanmei is also the lawful assignee of all right, title, and interest in and to the U.S. Patent No. D1,006,076 ("Shunhechuanmei Patent," "076 patent" and "D1,006,076 patent"). *Id*. at ¶ 8. The D1,006,076 patent protecting a metal nibbler drill attachment design ("Shunhechuanmei Design") embodied in Shunhechuanmei Products was lawfully filed on December 6, 2022 and issued on November 28, 2023. *Id*. Shunhechuanmei Products have become very popular, driven by Shunhechuanmei's arduous quality standards and Shunhechuanmei Products' unique and innovative design. *Id*. at ¶ 6. As a result, among the purchasing public, genuine Shunhechuanmei Products are instantly recognizable as such. *Id*. In the United States and around the world, the Shunhechuanmei brand has come to symbolize high quality, and Shunhechuanmei Products are among the most recognizable products on e-commerce platforms. *Id*. Shunhechuanmei Products have enjoyed substantial sales success. *Id*.

Shunhechuanmei Products are known for their distinctive patented designs. These designs are broadly recognized by consumers. *Id*. at ¶ 7. Metal nibbler drill attachment products styled after these designs are associated with the quality and innovation that the public has come to expect from Shunhechuanmei Products. *Id*. Shunhechuanmei uses these designs in connection with its Shunhechuanmei Products *Id*.

Defaulting Defendants made, used, offered for sale, sold, and/or imported into the United States for subsequent sale or use the same product, namely metal nibbler drill

attachments, that infringes directly and/or indirectly the Shunhechuanmei Design (the "Infringing Products"). *Id*. at ¶ 9. Infringing Products were offered for sale and shipping to residents of the United States, including Illinois residents without license or authorization from Shunhechuanmei. *Id*. Defaulting Defendants have targeted sales to Illinois residents by setting up and operating e-commerce stores under the seller aliases identified in Schedule A to the Complaint (the "Seller Aliases"). *Id*. The e-commerce stores target United States consumers using one or more Seller Aliases, offer shipping to the United States, including Illinois, accept payment in U.S. dollars and/or funds from U.S. bank accounts, and, on information and belief, have sold Infringing Products to residents of Illinois. *Id*. at ¶ 10. Additional factual assertions applicable to Defaulting Defendants are found in Paragraphs 13-24 of the Complaint are incorporated herein.

Shunhechuanmei filed this action on February 19, 2025 alleging patent infringement pursuant to 35 U.S.C. § 271 (Count I) [Dkt. No. 1]. On April 9, 2025, this Court granted Shunhechuanmei's *Ex Parte* Motion for Entry of a Temporary Restraining Order (the "TRO") [Dkt. Nos. 16-17], and subsequently extended the TRO to May 7, 2025 [Dkt. No. 20]. On April 27, 2025, this Court took Plaintiff's motion for entry of a preliminary injunction order under advisement [Dkt. No. 27]. Pursuant to the TRO order, Shunhechuanmei was permitted to serve all defendants of the case by electronically publishing a link to the Complaint, the TRO and other relevant documents on a website, or by sending an e-mail to the e-mail addresses identified in Exhibit 2 to the Declaration of Wei Gao and any e-mail addresses provided for Defaulting Defendants by third parties that includes a link to the website [Dkt. No. 17]. The Defaulting Defendants identified in the List of Defaulting Defendants were properly served on April 18, 2025 [Dkt. No. 23].

None of the Defaulting Defendants has filed an answer in this manner or settled with Plaintiff. *See* Declaration of Konrad Sherinian (the "Sherinian Declaration") at ¶ 5.

By choosing not to participate in this case, Defaulting Defendants have failed to produce any documents or information for: (1) identifying each and every domain name, online marketplace account and/or financial account used by Defaulting Defendants, including the owner(s) and/or operator(s) of each Online Marketplace; (2) showing costs, cost allocations, revenues, and profits of Defaulting Defendants for the last five (5) years; or (3) relating to each and every purchase that Defaulting Defendants have made relating to the Shunhechuanmei Design and/or the Infringing Products, including records of the products purchased, the sale prices, images of the products, records of suppliers and manufacturers of the products, records of steps taken by Defaulting Defendants to determine whether such products were new or genuine, and records of investigation notes regarding purchase of the products, including the identity of the person(s) responsible for such investigation. Limited information provided by Amazon.com ("Amazon") for Defaulting Defendants indicates that the amount currently restrained in Defaulting Defendants' known financial accounts ranges from -$31.89 - $9,523.52. Sherinian Declaration at ¶ 8. Additionally, the limited information provided by Amazon.com indicates that the estimated revenue generated by Defaulting Defendants totals $93,562.92 with a maximum of $65,342.78. *Id*. Plaintiff does not have any infringing sales information for other potential Infringing Products sold by Defaulting Defendants.

Pursuant to Federal Rule of Civil Procedure 55(a) and (b)(2), Shunhechuanmei now moves this Court for an Order entering default and default judgment finding that Defaulting Defendants are liable on Count I of Plaintiff's Complaint. Fed. R. Civ. P. 55(a)

and (b)(2). Plaintiff further seeks entry of a permanent injunction prohibiting Defaulting Defendants from selling Infringing Products. Plaintiff further seeks an order that, for Defaulting Defendants wherein infringing product revenue is unknown, all assets in Defaulting Defendants' financial accounts, including those operated by Amazon, as well as any newly discovered assets, but no less than $250, be transferred to Plaintiff. Alternatively, for Defaulting Defendants where limited infringing product revenue is available, Plaintiff requests that the greater amount between the restrained funds and the known infringing product revenue, but no less than $250, be awarded to Plaintiff.

ARGUMENT

I. 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 Patent Act, 35 U.S.C. § 11 et seq., 28 U.S.C. § 1338(a)-(b) and 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 Defendants since each of the Defendants directly targets business activities toward consumers in Illinois and causes harm to Plainitff's business within this judicial district. *See* Complaint, Dkt. No. 1 ¶¶ 2-3; *uBID, Inc. v. GoDaddy Grp., Inc*. 623 F.3d 421, 423-24 (7th Cir. 2010) (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/or online marketplace accounts operating under the 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 Infringing Products to residents within the United States, including Illinois, accept payment in U.S. dollars and, on information and belief, has sold products bearing counterfeit versions of Shunhechuanmei Design to residents of Illinois. Dec. Wei Gao, ¶ 9-11 [Dkt. No. 9]. 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 Plaintiff substantial injury in the State of Illinois. *See, e.g., Khara Inc. and Ground Works Co. Ltd. v. The Partnerships and Unincorporated Associations Identified on Schedule "A",* No. 22-cv-00851 (N.D. Ill. Apr. 28, 2022) and *Toho Co., Ltd. v. The Partnerships and Unincorporated Associations Identified on Schedule "A*", No. 22-cv-01094 (N.D. Ill. Apr. 29, 2022).

II. PLAINTIFF HAS 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 February 19, 2025, Plaintiff filed its Complaint alleging, among other claims, patent infringement of the D1,006,076 patent pursuant to 35 U.S.C. § 271 (Count I). The Defaulting Defendants were properly served on April 18, 2025. [Dkt. No. 23]. Despite having been served with process, the Defaulting Defendants have ignored these proceedings and failed to plead or otherwise defend this action. Sherinian Declaration at ¶ 5. Upon information and belief, the Defaulting Defendants are not active-duty members of the U.S. armed forces. Sherinian Declaration at ¶ 6. Accordingly, Plaintiff asks for entry of default against the Defaulting Defendants.

III. PLAINTIFF HAS 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).

At least 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 List of Defaulting Defendants. *See* Fed. R. Civ. P. 12(a)(1)(A). Accordingly, default judgment is appropriate, and consistent with previous similar cases in the Northern District of Illinois, Plaintiff requests an award of Defaulting Defendants' profits resulting from Defaulting Defendants' unauthorized use and infringement of the Shunhechuanmei Design on products sold through the e-commerce stores operating under the Seller Aliases. Plaintiff also seeks entry of a permanent injunction prohibiting Defaulting Defendants from making, using, offering for sale, selling, and importing Infringing Products, and that all assets in Defaulting Defendants' financial accounts operated by Amazon and any newly identified accounts, but no less than $250, be transferred to Shunhechuanmei. Alternatively, for Defaulting Defendants where limited infringing product revenue is available, Plaintiff requests that the greater amount between the restrained funds and the known infringing product revenue, but no less than $250, be awarded to Plaintiff.

The Patent Act provides that "whoever without authority makes, uses, offers to sell, or sells any patented invention, within the United States or imports into the United States any patented invention during the term of the patent therefor, infringes the patent." 35 U.S.C. § 271(a). Plaintiff alleged in its Complaint that it is the lawful assignee of all right, title, and interest in and to the Shunhechuanmei Design. [Dkt. No. 1] at ¶ 9. Plaintiff has also alleged that Defaulting Defendants make, use, offer for sale, sell, and/or import into the United States for subsequent sale or use Infringing Products that infringe directly and/or indirectly the ornamental design claimed in the Shunhechuanmei Design. *Id*. at ¶ 23. Exhibit 1 to the Complaint shows that an ordinary observer would be deceived into thinking that the Infringing Products were the same as the Shunhechuanmei Design. [Dkt. No. 1-1]. *See Competitive Edge, Inc. v. Staples, Inc*., 763 F. Supp. 2d 997, 1011 (N.D. Ill. 2010) (citing *Egyptian Goddess, Inc. v. Swisa, Inc*., 543 F.3d 665, 672 (Fed. Cir. 2008)). Finally, Plaintiff alleged that it has not licensed or authorized Defaulting Defendants to use the Shunhechuanmei Design, and none of the Defaulting Defendants are authorized retailers of genuine Shunhechuanmei Products. [Dkt. No. 1] at ¶ 16.

Since the Defaulting Defendants have failed to answer or otherwise plead in this matter, the Court should accept the allegations contained in Plaintiff's 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, Plaintiff requests entry of judgment with respect to Count I for patent infringement against the Defaulting Defendants.

IV. PLAINTIFF IS ENTITLED TO DEFENDANTS' PROFITS, BUT NOT LESS THAN $250, PURSUANT TO 35 U.S.C. § 289

In the case of design patent infringement, a patentee may recover the total profits made by a defendant under 35 U.S.C. § 289. Section 289 provides that "[w]hoever during

the term of a patent for a design, without license of the owner, (1) applies the patented design, or any colorable imitation thereof, to any article of manufacture for the purpose of sale, or (2) sells or exposes for sale any article of manufacture to which such design or colorable imitation has been applied shall be liable to the owner to the extent of his total profit, but not less than $250….” 35 U.S.C. § 289.

Determining an award under Section 289 involves two steps: “First, identify the ‘article of manufacture’ to which the infringed design has been applied. Second, calculate the infringer’s total profit made on that article of manufacture.” *Samsung Elecs. Co. v. Apple, Inc.,* 137 S. Ct. 429, 434 (2016). The plaintiff has the initial burden to show the article of manufacture and the defendant’s total profit on that article. *Nordock, Inc. v. Systems, Inc.,* 2017 U.S. Dist. LEXIS 192413, at * 7 (E.D. Wisc. 2017). However, if the defendant believes that the article of manufacture is different, it has the burden to produce evidence showing the article of manufacture. *Id*. The defendant also has the burden to produce evidence as to any deductions from the total profit identified by plaintiff. *Id*. The Supreme Court has made it clear that:

> The burden is the infringer's to prove that his infringement had no cash value in sales made by him. If he does not do so, the profits made on sales of goods bearing the infringing mark properly belong to the owner of the mark. There may well be a windfall to the trademark owner where it is impossible to isolate the profits which are attributable to the use of the infringing mark. But to hold otherwise would give the windfall to the wrongdoer.

WMS Gaming, Inc. v. WPC Prods. Ltd., 542 F.3d 601, 608 (7th Cir. 2008) citing *Mishawaka Rubber & Woolen Mfg. Co. v. S.S. Kresge Co*., 316 U.S. 203, 206-07, 62 S. Ct. 1022, 86 L. Ed. 1381, 1942 Dec. Comm'r Pat. 767 (1942). “Although § 289 does not explicitly impose any burden on the defendant, this shift in the burden of production is consistent with the disgorgement of profits in other contexts.” *Nordock, Inc. v. Systems,*

Inc., 2017 U.S. Dist. LEXIS 192413, at *7-8. "[Patent holders] are entitled to an award best approximating their actual loss, and the infringers must bear the burden of uncertainty." *In re Mahurkar Double Lumen Hemodialysis Catheter Patent Litigation*, 831 F. Supp. 1354, 1388 (N.D. Ill. 1993) (citations omitted).

In cases where defendants have failed to produce documents to characterize revenue, courts have entered a profits award for the entire revenue amount. *See Bergstrom v. Sears, Roebuck and Co*., 496 F. Supp. 476, 497 (D. Minn. 1980) ("The burden of establishing the nature and amount of these costs, as well as their relationship to the infringing product, is on the defendants."); *see also WMS Gaming, Inc. v. WPC Prods. Ltd*., 542 F.3d 601, 608 (7th Cir. Ill. 2008) ("[t]he burden was therefore on PartyGaming to show that certain portions of its revenues…were not obtained through its infringement of WMS's marks."); *Chloe v. Queen Bee of Beverly Hills,* 2009 U.S. Dist. LEXIS 84133, at *15-17 (S.D.N.Y. Jul. 16, 2009) (entering profits award for the entire revenue amount in trademark infringement case even though "records offer no guidance as to how much of this revenue stream related to [Plaintiff's] products [as opposed to other products not at issue in this case] or as to the costs incurred in acquiring and selling these products."). Under normal circumstances, it is the infringer who bears the burden of "offering a fair and acceptable formula for allocating a given portion of overhead to the particular infringing items in issue." *Deckers Outdoor Corp. v. ShoeScandal.com, Ltd. liability Co*., No. CV 12-7382, 2013 U.S. Dist. LEXIS 168545, at *12 (C.D. Cal. Nov. 25, 2013), *citing Sunbeam Prods., Inc. v. Wing Shing Prods. (BVI) Ltd*., 311 B.R. 378, 401 (S.D.N.Y. 2004) aff'd, 153 F. App'x 703 (Fed. Cir. 2005). "But if the infringer has failed to produce any evidence … the Court must determine the costs to be subtracted from

revenue based on the evidence it has to determine profits." *See Nike, Inc. v. Wal-Mart Stores, Inc.,* 138 F.3d 1437, 1447 (Fed. Cir. 1998).

In the instant case, the Shunhechuanmei Design claims "[t]he ornamental design for a metal nibbler drill attachment." [Dkt. No. 1-2]. In the case of a design for a single-component product, such as the Shunhechuanmei Design, the "product is the article of manufacture to which the design has been applied." *Samsung Elecs. Co. v. Apple, Inc*., 137 S. Ct. at 367. As such, the relevant article of manufacture is each of the Infringing Products sold by Defaulting Defendants. Since Defaulting Defendants have chosen not to participate in these proceedings, Plaintiff has limited available information regarding Defaulting Defendants' profits from the sale of Infringing Products. Defaulting Defendants have failed to appear in this matter and have not produced any documents or information: (1) characterizing each of the transactions in their financial accounts, (2) other accepted payment methods; or (3) other Internet stores that they may be operating. As such, Defaulting Defendants have not met their burden to apportion gross receipts between infringing and non-infringing product sales, or to show any deductions. *WMS Gaming, Inc. v. WPC Prods. Ltd.,* 542 F.3d 601, 608 (7th Cir. 2008); *Nordock, Inc. v. Systems, Inc*., 2017 U.S. Dist. LEXIS 192413, at * 7.

Since Defaulting Defendants have not met their burden of apportioning gross sales or showing any deductions, the Court should award the greater of the amount restrained or $250.00 for each Defaulting Defendant where infringing product revenue is unknown. See 35 U.S.C. § 289; *Oakley, Inc. v. The Partnerships, et al.,* No. 20-cv-02970 (N.D. Ill. Oct. 26, 2020) (unpublished) (Docket No. 61) ("Although the information about defendants' profits and revenues is sparse and there is the possibility that the restrained

funds were generated by non-infringing sales, the court concludes that plaintiff's efforts provide the best available measure of profits."); *Moose Labs LLC v. The Partnerships, et al.,* No. 22-cv-04227 (N.D. Ill. Dec. 5, 2022) (unpublished) (Docket No. 43) ("Accordingly, and because no defendant has appeared to rebut the presumption that the contents of defendants' financial accounts are profits from infringing activity, plaintiff's request for damages is granted.").

For Defaulting Defendants where limited infringing product revenue is known, the Court should award the greater of the known infringing product revenue or the amount restrained, but no less than $250. See 35 U.S.C. § 289. However, the limited Infringing Product revenue information available to Plaintiff only includes revenue figures for a single product having a unique product identification number. Dec. Sherinian, at ¶ 7. Because Defaulting Defendants have failed to participate in the proceedings, Plaintiff is unable to obtain information regarding additional e-commerce stores owned by Defaulting Defendants and/or additional products sold by Defaulting Defendants that infringe the Shunhechuanmei Design. Further, Plaintiff is unable to obtain information regarding what portion of the amount currently restrained in Defaulting Defendants' accounts are proceeds from the sale of Infringing Products. A breakdown by Defaulting Defendant of the amount currently restrained, known Infringing Product revenue, if available, and Plaintiff's requested profit award under 35 U.S.C. § 289 is provided in the chart in Paragraph 11 of the Sherinian Declaration. *Id* at ¶ 11.

V. PLAINTIFF IS ENTITLED TO PERMANENT INJUNCTIVE RELIEF

In addition to the foregoing relief, Plaintiff respectfully requests entry of a permanent injunction enjoining Defaulting Defendants from infringing or otherwise violating Plaintiff's rights in the Shunhechuanmei Design, including at least all injunctive

relief previously awarded by this Court to Plaintiff in the TRO. Plaintiff is also entitled to injunctive relief so it can quickly take action against any new e-commerce stores that are identified, found to be linked to Defaulting Defendants, and selling Infringing Products. See, e.g., *Tuf-Tite, Inc. v. Fed. Package Networks, Inc.*, 2014 U.S. Dist. LEXIS 163352, at *29 (N.D. Ill. 2014); *Scholle Corp. v. Rapak LLC*, 35 F. Supp. 3d 1005, 1009 (N.D. Ill. 2014); *Nike, Inc. v. Fujian Bestwinn Industry Co., Ltd.*, 166 F. Supp. 3d 1177, 1178-79 (D. Nev. 2016).

CONCLUSION

Plaintiff respectfully requests that the Court enter default and default judgment against each Defaulting Defendants, including a corresponding profit award under 35 U.S.C. § 289 and a permanent injunction order prohibiting Defaulting Defendants from selling Infringing Products. Plaintiff further seeks an order that all assets in Defaulting Defendants' financial accounts, up to the requested damages amount, including those operated by Amazon, as well as any newly discovered assets, be transferred to Plaintiff.

GUANGDONGSHENG SHUNHECHUANMEI CO., LTD.

Date: May 11, 2025

By: /s/ Konrad Sherinian
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