

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

VORTEX, INC.,

Plaintiff,

v.

THE PARTNERSHIPS and  
UNINCORPORATED ASSOCIATIONS  
IDENTIFIED ON SCHEDULE “A,”

Defendants.

Case No. 1:22-CV-04189

The Honorable Gary Feinerman

**PLAINTIFF’S MEMORANDUM IN SUPPORT OF ITS  
MOTION FOR ENTRY OF DEFAULT AND DEFAULT JUDGMENT**

Plaintiff Vortex, Inc. (“Plaintiff” or “Vortex”), submits the following memorandum of law in support of its Motion for Entry of Default and Default Judgment under Fed. R. Civ. P. 55 against the defendants identified in Schedule A to the Complaint (collectively, the “Defaulting Defendants”) based on Vortex’s action for federal trademark infringement, trademark counterfeiting, unfair competition, and false designation of origin, under Sections 32 and 43(a) of the Lanham Act, 15 U.S.C. §§ 1114, 1125(a), (c), copyright infringement under the Copyright Act, 17 U.S.C. §§ 106, 501, and violation of the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS § 510.

**STATEMENT OF FACTS**

Plaintiff is the sole owner of all the intellectual property, including trademarks and copyrights, related to *The Texas Chainsaw Massacre* film, a slasher film first released in 1974, and the film's main character Leatherface. According to The Academy of Motion Picture Arts and Sciences (the “Academy”), the film “opened up a new frontier of the horror genre, exploring psychological dread and terror in ways previously unseen.” According to the Academy, “[t]he effects of this [*The Texas Chainsaw Massacre*] expedition have left a strong mark on film history, and continue to influence films today.” <https://www.oscars.org/film-archive/collections/texas->

[chainsaw-massacre-collection](#). Since then, the franchise has been expanded through multiple sequel films, as well as comics and video game adaptation. *The Texas Chainsaw Massacre* films have achieved critical acclaim and enormous commercial success and have grossed over \$250 million dollars at the box office. Complaint [Dkt. 1] at ¶ 8.

*The Texas Chainsaw Massacre* films are available on DVD, tape, and various streaming services around the world and are routinely lauded as among the best works in the horror film genre (the “TCM Films”). Plaintiff and its authorized licensees also sell various merchandise, including but not limited to, clothing, jewelry, headwear, masks, posters, patches, pins, and stickers, under THE TEXAS CHAINSAW MASSACRE mark and bearing certain of Plaintiff’s trademarks and/or copyrights (the “TCM Merchandise”) (the TCM Films and TCM Merchandise together are the “TCM Products”). The TCM Products are widely celebrated and popular around the world, including in the State of Illinois and this District. *Id.* at ¶ 9.

Vortex holds registrations for its trademarks related to the TCM Films and products with the United States Patent and Trademark Office (referred to herein as the “TCM Marks”). *Id.* at ¶ 11. In addition, Vortex holds copyright registrations encompassing works constituting or related to the TCM Films (referred to herein as the “TCM Copyrights”). *Id.* at 19. Additional factual assertions regarding Vortex in Paragraphs 6 – 24 of the Complaint are incorporated herein by reference.

Defaulting Defendants are individuals and purported business entities who, either individually or jointly, own and/or operate one or more of the e-commerce stores under at least the seller aliases identified in Schedule A to the Complaint (collectively, the “Seller Aliases”). *Id.* at ¶ 7. Each Defaulting Defendant directs sales to Illinois residents by creating and operating e-commerce stores that target U.S. consumers using one or more Seller Aliases, offer shipping to the U.S., including Illinois, accept payment in U.S. dollars, and has offered for sale and/or sold unauthorized and unlicensed products, including but not limited to t-shirts, masks, and headwear, using infringing and counterfeit versions of the Vortex federally registered Trademarks (the “Counterfeit Products”) to residents of Illinois. *Id.* at ¶¶ 25, 27, 33. Additional factual assertions

regarding Defaulting Defendants set forth in Paragraphs 25 – 35 of the Complaint are incorporated herein by reference.

Vortex filed this action on August 9, 2022. Complaint [Dkt. 1]. On August 18, 2022, this Court granted Vortex's *Ex Parte* Motion for Entry of a Temporary Restraining Order (the "TRO") [Dkt. 20], subsequently extended the TRO [Dkt. 26], and granted Vortex's Motion for a Preliminary Injunction [Dkt. 29]. Paragraph 8 of the Preliminary Injunction Order (the "PI Order") permitted Vortex to complete service of process on Defendants by electronically publishing a link to the Complaint, the PI Order, and other relevant documents on a website or by sending an e-mail to the e-mail addresses identified in Schedule A and to any e-mail addresses provided for Defendants by third parties that includes a link to the subject website. [Dkt. 40] at ¶ 8. The Defendants were properly served on October 17, 2022. *See* Declaration of Jeff Leung (the "Leung Declaration") at ¶ 2. None of the Defaulting Defendants has filed an answer or responsive pleading in this action. *See* Leung Declaration at ¶ 3.

Pursuant to Federal Rule of Civil Procedure 55(a) and (b)(2), Vortex moves this Court for an Order entering default and default judgment finding that Defaulting Defendants are liable on all counts set forth in Vortex's Complaint. Fed. R. Civ. P. 55(a) and (b)(2). Vortex further seeks an award of statutory damages as authorized by 15 U.S.C. § 1117(c)(2) for willful trademark counterfeiting and as authorized by 17 U.S.C. § 504(c)(2) for willful copyright infringement against each of the Defaulting Defendants for use of counterfeit TCM Trademarks or infringing TCM Copyrights on products sold through each of the e-commerce stores operating under the Seller Aliases. Moreover, Vortex seeks entry of a permanent injunction prohibiting Defaulting Defendants from selling Counterfeit Products, and an order that all assets in Defaulting Defendants' financial accounts, including those operated by PayPal, Inc. ("PayPal"), Alibaba, Aliexpress, and any Alibaba related entity (the "Alibaba Entities"), DHgate, Wish, PingPong, JP Morgan, Pay Eco, Um Pay, LianLian Pay and/or Payoneer, as well as any newly discovered assets, be transferred to Vortex.

## 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 Lanham Act, 15 U.S.C. § 1121, 17 U.S.C. §1121 28 U.S.C. §§ 1331 and 1338 (a) and (b). Venue is proper in this Court under 28 U.S.C. § 1391, and this Court may properly exercise personal jurisdiction over Defendants since each of the Defendants directs business activities toward consumers in Illinois and causes damage to Vortex’s business within this Judicial District. *See* Complaint [Dkt. 1] at ¶¶ 3, 4, and 25; *Tamburo v. Dworkin*, 601 F.3d 693, 700 (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 plaintiff’s favor).

Through the fully interactive, e-commerce stores operating under the Seller Aliases, each of the Defaulting Defendants has targeted sales from Illinois residents by setting up and operating e-commerce stores that target United States consumers using one or more Seller Aliases, offering shipping to the United States, including Illinois, accepting payment in U.S. dollars, and, on information and belief, has sold counterfeit products and/or products which infringe upon Plaintiff’s TCM Marks and/or Plaintiff’s TCM Copyrights by selling and/or offering for sale unauthorized, unauthentic, and counterfeit products in connection with the TCM Marks and/or TCM Copyrights (“the Counterfeit Products”) to consumers in the United States, including the State of Illinois. Complaint [Dkt. 1] at ¶ 3. Personal jurisdiction exists over Defaulting Defendants because they directly focus their unlawful business activities and infringing products toward consumers in the United States, including in the State of Illinois. Specifically, Defaulting Defendants are reaching out to do business with Illinois residents by operating one or more commercial, interactive e-commerce store fronts under the Seller Aliases through which Illinois residents can purchase Counterfeit Products. *Id. See, Monster Energy Co. v. Wensheng*, 136 F. Supp. 3d 897, 906 (N.D. Ill. 2015) (finding that “defendants expressly elected to do business with

the residents ... of Illinois” with their “... intentionally created and operated commercial, fully interactive ... Internet stores...through which consumers can purchase counterfeit...[p]roducts”).

## **II. VORTEX HAS SATISFIED THE REQUIREMENTS FOR ENTRY OF DEFAULT AGAINST DEFENDANTS.**

Under 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 August 9, 2022, Vortex filed its Complaint against Defendants alleging federal trademark infringement, trademark counterfeiting, unfair competition, and false designation of origin, under Sections 32 and 43(a) of the Lanham Act, 15 U.S.C. §§ 1114, 1125(a), (c), copyright infringement under the Copyright Act, 17 U.S.C. §§ 106, 501, and violation of the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS § 510. [Dkt. 1]. Vortex properly served Defendants with the Complaint on October 17, 2022. *See* Leung Declaration” at ¶ 2. None of the Defaulting Defendants have filed an answer or responsive pleading in this action. *See* Leung Declaration” at ¶ 3. Upon information and belief, the Defaulting Defendants are not active-duty members of the U.S. armed forces. *Id.* at ¶ 4. Therefore, Vortex is entitled to entry of default against the Defaulting Defendants.

## **III. VORTEX HAS FULFILLED THE REQUIREMENTS FOR ENTRY OF DEFAULT JUDGMENT**

Federal Rules of Civil Procedure Rule 55(b)(2) 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. *Dundee Cement Co. v. Howard Pipe & Concrete Prods.*, 722 F.2d 1319, 1323 (7th Cir. 1983). 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. *United States v. Di Mucci*, 879 F.2d 1488, 1497 (7th Cir. 1989); *Black v. Lane*, 22 F.3d 1395, 1399 (7th Cir. 1994).

As noted above, Vortex served Defendants with the Complaint on October 17, 2022. *See* Leung Declaration at ¶ 2. The answer period has expired and no answer or other responsive

pleading has been filed by any of the Defaulting Defendants. *See* Fed. R. Civ. P. 12(a)(1)(A). Accordingly, the Court may enter a default judgment, and consistent with previous similar cases before this Court, Vortex requests 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 counterfeit TCM Trademarks on products sold through the e-commerce marketplaces operating under the Seller Aliases. In addition, Vortex seeks entry of a permanent injunction prohibiting Defaulting Defendants from selling Counterfeit Products and an order that all assets in Defaulting Defendants' financial accounts, including those operated by PayPal, Alibaba, Aliexpress, and the Alibaba Entities, DHgate, Wish, PingPong, JP Morgan, Pay Eco, Um Pay, LianLian Pay and/or Payoneer, and any newly identified accounts be transferred to Vortex.

**A. Trademark Infringement and Counterfeiting and False Designation of Origin**

To properly plead a claim of trademark infringement and counterfeiting under 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 Bliss Salon Day Spa v. Bliss World LLC*, 268 F.3d 494, 496-97 (7th Cir. 2001).

Vortex alleged in its Complaint that it is the exclusive owner of the federally registered TCM Trademarks, that Defaulting Defendants have sold, offered to sell, marketed, distributed, and advertised, and are still selling, offering to sell, marketing, distributing, and advertising products using infringing and counterfeit reproductions of the TCM Trademarks, that Defaulting Defendants have knowledge of Vortex's rights in the TCM Trademarks, that Defaulting Defendants are not authorized to use the TCM Trademarks, and that Defaulting Defendants' use of the TCM Trademarks causes a likelihood of confusion. Complaint [Dkt. 1] at ¶¶ 8-12, 33.

In addition, Vortex alleged in the Complaint that Defaulting Defendants are using the TCM federally registered Trademarks without authorization on the Counterfeit Products. *Id.* [Dkt. 1] at ¶ 33. In turn, this creates a likelihood of confusion, mistake, and deception among consumers as

to the affiliation, connection, or association with Vortex or the origin, sponsorship, or approval of Defaulting Defendants' Counterfeit Products by Vortex. *Id.*

Because the Defaulting Defendants have failed to answer or otherwise plead in this matter, the Court must accept the allegations contained in Vortex'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, Vortex requests entry of judgment regarding Counts I through III for willful trademark infringement and counterfeiting of the TCM Trademarks and willful false designation of origin against the Defaulting Defendants.

### **B. Copyright Infringement**

To state a valid claim for copyright infringement, a plaintiff must plausibly allege that: (1) the plaintiff owns a valid copyright; and (2) the defendant copied fundamental elements of the work that are original. *Pers. Keepsakes, Inc. v. Personalizationmall.com, Inc.*, 975 F. Supp. 2d 920, 923 (N.D. Ill. 2013).

Vortex alleged in the Complaint that it is the exclusive owner of copyright registrations, encompassing works constituting or related to the TCM Films. Complaint [Dkt. 1] at ¶ 19. Further, Vortex alleged on information and belief that the Defaulting Defendants have designed their Internet stores to deceptively appear like authorized entities selling genuine TCM Products even though they are not authorized to do so and even though their goods under the TCM Copyrights are not genuine. *Id.* at ¶ 27. Vortex also alleged that "[Defaulting] Defendants have sold unauthorized products that use, are based on, and/or are derived from copyrighted subject matter created by Plaintiff and protected by the TCM Copyrights." *Id.* at ¶ 33. Vortex further alleged on information and belief that the Defaulting Defendants wrongfully created copies of the copyrighted works without Plaintiff's consent and engaged in acts of widespread infringement. *Id.* at ¶ 69.

Because the Defaulting Defendants have failed to answer or otherwise plead in this matter, the Court must accept the allegations contained in Vortex's Complaint as true. *See* Fed. R. Civ. P. 8(b)(6). Consequently, Vortex requests entry of judgment against the Defaulting Defendant regarding Count IV for copyright infringement.

**C. Violation of Illinois State Uniform Deceptive Trade Practices Act**

A defendant violates the Illinois State Uniform Deceptive Trade Practices Act by causing the likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services. 815 Ill. Comp. Stat. Ann. 510/2. Under Illinois law, proof of trademark infringement is sufficient to establish a violation of the Illinois Uniform Deceptive Trade Practices Act. *Gold v. Golden G.T., LLC*, No. 05 C 288, 2005 WL 2465815, at \*3 (N.D. Ill. Oct. 4, 2005).

As discussed above, Vortex alleged in the Complaint that it is the exclusive owner of the federally registered TCM Trademarks, that Defaulting Defendants have sold, marketed, distributed, and advertised products using infringing and counterfeit reproductions of the TCM Trademarks and as such have passed off their products and merchandise as those of Plaintiff's, when they are not, that Defaulting Defendants have knowledge of Vortex's rights in the TCM Trademarks, that Defaulting Defendants are not authorized to use the TCM Trademarks, and that Defaulting Defendants' use of the TCM Trademarks causes a likelihood of confusion as to the source of the genuine products of Plaintiff. Complaint [Dkt. 1] at ¶¶ 8-12, 33, 77.

Because the Defaulting Defendants have failed to answer or otherwise plead in this matter, the Court must accept the allegations contained in Vortex's Complaint as true. *See* Fed. R. Civ. P. 8(b)(6). Therefore, Vortex requests entry of judgment against the Defaulting Defendants Count V for violation of the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS § 510.

**IV. VORTEX IS ENTITLED TO A STATUTORY DAMAGES AWARD.**

**A. Statutory Damages Are Warranted Against the Defaulting Defendants**

Under 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 Court determines that the counterfeiting is 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). Similarly, the statutory damages provision of the Copyright Act, 17 U.S.C. § 504(c)(2), allows for up to \$150,000 for willful infringement of a copyright.

Here, the Defaulting Defendants’ longstanding counterfeiting activity undisputed by Defendants supports awarding the maximum statutory damages to Plaintiff. As discussed above, Vortex has sufficiently alleged trademark and copyright infringement against the Defaulting Defendants setting forth factual allegations demonstrating willful infringement. *See* Complaint [Dkt. 1] at ¶¶ 8-12, 19, 27, 33, 69. In response, the Defaulting Defendants have failed to answer these allegations or otherwise plead in this matter.

Although 15 U.S.C. § 1117(c) sets out the dollar range for potential statutory damage awards, in these cases, the only guidance 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 Lorillard Tobacco Co. v. S & M Cent. Serv. Corp.*, No. 03 C 4986, 2004 WL 2534378, at \*5 (N.D. Ill. Nov. 8, 2004); *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); *Sara Lee v. Bags of New York, Inc.*, 36 F. Supp. 2d 161, 166 (S.D.N.Y. 1999).

In the Seventh Circuit, the standard for awarding statutory damages for copyright infringement under 17 U.S.C § 504(c) is enunciated in *Chi-Boy Music v. Charlie Club*, 930 F.2d 1224, 1229 (7th Cir. 1991). Under the *Chi-Boy* standard, a court awarding statutory damages is “not required to follow any rigid formula,” but rather “enjoys wide discretion.” *Id.* In computing the award amount, a court may consider various 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.*, 2004 WL 2534378, at \*2 (N.D. Ill. Nov. 8, 2004).

Moreover, courts have awarded considerable damage amounts where a defendant's counterfeiting activities attracted widespread market exposure through Internet traffic or advertisement. *See Coach, Inc. v. Ocean Point Gifts*, 2010 WL 2521444, at \*6 (D.N.J. 2010) (significant damage awards in counterfeit cases were "due in part to the wide market exposure that the Internet can provide"); *Burberry Ltd. v. Designers Imports, Inc.*, 2010 WL 199906 \*10 (S.D.N.Y. Jan. 19, 2010) (damages amount based, in part, on "Defendant's ability to reach a vast customer base through internet advertising").

In analogous cases involving willful e-commerce-based counterfeiting, courts have awarded statutory damages, including up to the maximum amount provided by law, to the plaintiff to serve the purposes of: (1) deterring the defendant and others situated like it from bringing into commerce counterfeit goods, (2) compensating the plaintiff for damages caused by defendant's infringement, and (3) punishing the defendant appropriately for its counterfeiting activities. *See, e.g., Burberry Limited, et al. v. XIE JI PING, et al.*, No. 18-cv-07442 (N.D. Ill. Jan. 15, 2019) (unpublished) (Dkt. Nos. 42 and 43) (awarding \$1,000,000 in statutory damages per defendant); *NBA Properties, Inc., et al. v. YU ZICHENG, et al.*, 19-cv-04412 (N.D. Ill. Oct. 8, 2019) (unpublished) (Dkt. Nos. 60 and 61) (awarding \$500,000 in statutory damages per defendant); *H-D U.S.A., LLC v. DLLL, et al.*, No. 19-cv-07629 (N.D. Ill. Feb. 18, 2020) (unpublished) (Dkt. Nos. 64 and 65) (same).

Based on the Court's discretion in determining the appropriate amount of the statutory damages award within the limits of 15 U.S.C. § 1117(c) and 17 U.S.C. § 504(c) and the facts specific to this case, including willful infringement as discussed below, Vortex respectfully requests the Court's entry of an award of two million dollars (\$2,000,000) per Defaulting Defendant for willful trademark infringement and one hundred fifty thousand dollars (\$150,000) per Defaulting Defendant for willful copyright infringement.

i. Defaulting Defendants’ Willful Counterfeiting Supports the Requested Award in Favor of Vortex.

Defaulting Defendants’ counterfeiting was willful and, thus, at a minimum, mandates the requested statutory damages award. “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.” *Lorillard Tobacco Co. v. S & M Cent. Serv. Corp.*, 2004 WL 2534378, at \*7 (N.D. Ill. Nov. 8, 2004). Knowledge need not be proven directly, but can be inferred from a defendant’s conduct. *Id.* As alleged in Vortex’s Complaint, Defaulting Defendants facilitated sales by designing the e-commerce stores so that they appeared to unknowing consumers to be authorized online retailers, outlet stores, or wholesalers. [Dkt. 1] at ¶ 27. As such, Defaulting Defendants clearly had knowledge that their activities constituted infringement or at a minimum, reckless disregard for Plaintiff’s rights in the TCM Trademarks. [Dkt. 1] at ¶¶ 25-30. Finally, District Courts have deemed counterfeiting willful when defendants default. *See Burberry Limited, et al. v. The Partnerships, et al.*, No. 14-cv-08220 (N.D. Ill. Dec. 11, 2014) (unpublished) (Dkt. Nos. 44 and 45); *Oakley, Inc. v. The Partnerships, et al.*, No. 13-cv-02958 (N.D. Ill. June 17, 2013) (unpublished) (Dkt. Nos. 36 and 37).

ii. The Value of the TCM Trademarks and Vortex’s Efforts to Promote, Protect and Enhance the Brand Justify the Requested Award.

To determine an appropriate statutory damage award, the Court should be guided by the *Lorillard* case and consider the “significant value of [the brand] and the efforts taken to protect, promote and enhance [that brand].” *Lorillard Tobacco Co.*, 2004 WL 2534378, at \*6 (N.D. Ill. Nov. 8, 2004). Vortex has expended significant time, money, and other resources in developing, advertising and otherwise promoting the TCM Trademarks. [Dkt. 10-1] at ¶ 9. Thus, the requested statutory damages award should be given favorable consideration in view of the value of the TCM brand and the extensive steps being taken by Vortex to protect, promote, and enhance it. *See Luxottica USA LLC v. The Partnerships, et al.*, 2015 WL 3818622, at \*2-3 (N.D. Ill. June 18, 2015).

iii. Defaulting Defendant's Widespread Market Exposure over the Internet Warrants the Requested Award.

Defendants who operate their businesses online attract wide market exposure through Internet traffic and/or advertisements. Defaulting Defendants' widespread market exposure over the Internet merits the requested statutory damages award. *See H-D U.S.A., LLC v. Guangzhou Tomas Crafts Co., et al.*, 2017 WL 6733685 (N.D. Ill. Dec. 18, 2017) (awarding \$150,000 in statutory damages, noting "the fact that defendant's counterfeiting took place online favors a higher statutory damages award because online counterfeiting can reach a much wider audience than counterfeiting through a physical store."); *Luxottica USA LLC v. The Partnerships, et al.*, 2017 WL 836228 at \*3 (N.D. Ill. Mar. 2, 2017) (summary judgment and awarding \$100,000 in statutory damages "because [defendant] advertised [counterfeit goods] on the internet, allowing for distribution far greater than if it sold the hats in a brick-and-mortar store.").

iv. The Requested Statutory Damages Award Will Adequately Deter Defaulting Defendants and Similar Online Counterfeit Sellers.

The remedy imposed must provide a sufficient deterrent effect to ensure that counterfeiters will not engage in further infringing conduct "...and once again pollute the marketplace." *Sands, Taylor & Wood*, 34 F.3d 1340, 1348 (7th Cir. 1994). In *Phillip Morris USA Inc. v. Marlboro Express*, the Court emphasized 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)." 2005 WL 2076921, at \*6 (E.D.N.Y. Aug. 26, 2005). *See also Luxottica USA LLC v. The Partnerships, et al.*, 2015 WL 3818622, at \*3.

In order to entice global consumers, counterfeiters advertise and sell their products via social media channels and widely-used e-commerce sites. In a February 2017 report commissioned by Business Action to Stop Counterfeiting and Piracy (BASCAP) and the International Trademark Association (INTA) titled *The Economic Impacts of Counterfeiting and Piracy*, the authors concluded that counterfeit products account for billions in economic losses, resulting in tens of

thousands of lost jobs. As such, the requested statutory damages award is essential to deter both Defaulting Defendants and other similarly situated counterfeit online sellers.

**V. VORTEX IS ENTITLED TO PERMANENT INJUNCTIVE RELIEF.**

In addition to the foregoing relief, Vortex respectfully requests entry of a permanent injunction enjoining Defaulting Defendants from infringing or otherwise violating Vortex's rights in the registered TCM Trademarks and Copyrights, including at least all injunctive relief previously awarded by this Court to Vortex in the TRO and Preliminary Injunction. Vortex is also entitled to injunctive relief so it can promptly take action against any e-commerce stores selling Counterfeit Products that are discovered to be connected to Defaulting Defendants. *See Burberry Limited, et al. v. The Partnerships, et al.*, No. 1:14-cv-08220 (N.D. Ill. Dec. 11, 2014) (unpublished) (Dkt. 44 and 45); *Oakley, Inc. v. The Partnerships, et al.*, No. 13-cv-02958 (N.D. Ill. June 17, 2013) (unpublished) (Dkt. 36 and 37).

**CONCLUSION**

Based on the foregoing, Vortex 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), one hundred fifty thousand dollars (\$150,000) per Defaulting Defendant pursuant to 17 U.S.C §504(c), and enter a permanent injunction order prohibiting Defaulting Defendants from selling, marketing, manufacturing and/or advertising Counterfeit Products, and transferring all Defaulting Defendant domain name registries to Plaintiff, and transferring all assets in Defaulting Defendants' financial accounts, including those operated by PayPal, Alibaba, Aliexpress, and the Alibaba Entities, DHgate, Wish, PingPong, JP Morgan, Pay Eco, Um Pay, LianLian Pay and/or Payoneer to Vortex.

Dated: November 17, 2022

Respectfully submitted,

**ARENTFOX SCHIFF LLP**

By: /s/ Lynn R. Fiorentino

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