

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
FORT LAUDERDALE DIVISION

CASE NO.: 0:22-cv-60729-WPD

TWOWS, LLC,

Plaintiff,

v.

THE INDIVIDUALS, PARTNERSHIPS AND  
UNINCORPORATED ASSOCIATIONS  
IDENTIFIED ON SCHEDULE "A,"

Defendants.

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**ORDER ON MOTION FOR ENTRY OF FINAL DEFAULT JUDGMENT**

THIS MATTER comes before the Court upon Plaintiff's TWOWS, LLC. ("Plaintiff"), Motion for Entry of Final Default Judgment (the "Motion") [DE 69], filed on July 12, 2022. A Clerk's Default, [DE. 47], was entered against Defendants on June 24, 2022, as Defendants failed to appear, answer, or otherwise plead to the Complaint, [DE 1], despite having been served. The Court has carefully considered the Motion, the record in this case, the applicable law, and is otherwise fully advised. The Court notes that Defendants failed to respond to the Court's July 13, 2022 Order to Show Cause why the Motion should not be granted. *See* [DE 78]. For the following reasons, Plaintiff's Motion [DE 69] is **GRANTED**.

**I. INTRODUCTION**

Plaintiff sued Defendants for copyright infringement under the Copyright Act, 17 U.S.C. §§ 106(1), (3), (4) & 501.

The Complaint alleges that Defendants are advertising, promoting, distributing, and performing Plaintiff's copyrighted work using counterfeits and confusingly similar imitations of

Plaintiff's registered work within the Southern District of Florida by operating the Defendants' Internet based e-commerce stores operating under each of the Seller IDs identified on Schedule "A" attached to Plaintiff's Motion for Entry of Final Default Judgment (the "Seller IDs").

Plaintiff further asserts that Defendants' unlawful activities have caused and will continue to cause irreparable injury to Plaintiff because Defendants have 1) deprived Plaintiff of its right to determine the manner in which its works are presented to consumers; (2) defrauded consumers into thinking Defendants' illicit copies of Plaintiff's copyrighted work are authorized by Plaintiff; (3) deceived the public as to Plaintiff's sponsorship of and/or association with Defendants' counterfeit products and the websites on online storefronts through which such products are sold, offered for sale, marketed, advertised, and distributed; (4) wrongfully traded and capitalized on Plaintiff's reputation and goodwill and the commercial value of the Plaintiff's copyrighted work; and (5) wrongfully damaged Plaintiff's ability to market its branded products and copyrighted works and products and educate consumers about its brand via the Internet in a free and fair marketplace.

In its Motion, Plaintiff seeks the entry of default final judgment against Defendants<sup>1</sup> in an action alleging infringement of copyright. Plaintiff further requests that the Court (1) enjoin Defendants unlawful use of Plaintiff's copyrighted work; (2) award Plaintiff damages; and (3) instruct any third party financial institutions in possession of any funds restrained or held on behalf of Defendants to transfer these funds to the Plaintiff in partial satisfaction of the award of damages.

Pursuant to Federal Rule of Civil Procedure 55(b)(2), the Court is authorized to enter a final judgment of default against a party who has failed to plead in response to a complaint. "[A]

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<sup>1</sup> Defendants are the Individuals, Partnerships, or Unincorporated Associations identified on Schedule "A" of Plaintiff's Motion, and Schedule "A" of this Order.

defendant's default does not in itself warrant the court entering a default judgment." *DirectTV, Inc. v. Huynh*, 318 F. Supp. 2d 1122, 1127 (M.D. Ala. 2004) (quoting *Nishimatsu Constr. Co., Ltd. v. Houston Nat'l Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975)). Granting a motion for default judgment is within the trial court's discretion. *See Nishimatsu*, 515 F.2d at 1206. Because the defendant is not held to admit facts that are not well pleaded or to admit conclusions of law, the court must first determine whether there is a sufficient basis in the pleading for the judgment to be entered. *See id.*; *see also Buchanan v. Bowman*, 820 F.2d 359, 361 (11th Cir. 1987) ("[L]iability is well-pled in the complaint, and is therefore established by the entry of default ... ."). Upon a review of Plaintiff's submissions, it appears there is a sufficient basis in the pleading for the default judgment to be entered in favor of Plaintiff.

## II. FACTUAL BACKGROUND<sup>2</sup>

Plaintiff is the owner of the motion picture *The Wolf Of Wall Street*, which is valid and registered with the United States Copyright Office, Registration Number PA0001872685 (the "Copyrighted Work"). *See* Exhibit 1 to Complaint, [DE 1-1] containing a copy of the U.S. Copyright Office's online record for this work. *See* Declaration of Randy Hermann, [DE 6-1] at 4. Plaintiff has exclusive rights in and to the Copyrighted Work. *Id.*

Defendants, through the various Internet based e-commerce stores operating under each of the Seller IDs identified on Schedule "A" hereto (the "Seller IDs") have advertised, promoted, offered for distribution, distributed and/or publicly performed the Copyrighted Work under what Plaintiff has determined to be counterfeits, infringements, reproductions, and/or colorable imitations of the Copyrighted Work. *See* Declaration of Randy Hermann, [DE 6-1] at 10-13; *see*

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<sup>2</sup> The factual background is taken from Plaintiff's Complaint, [ECF No. 1], Plaintiff's Motion for Entry of Final Default Judgment and supporting evidentiary submissions.

also Declaration of Richard Guerra, [DE. 6-2] at 4.

Plaintiff has submitted sufficient evidence showing each Defendant has infringed the Copyrighted Work at issue. *See* Declaration of Randy Hermann, [DE 6-1] at 10-13, and Schedule “C” to Declaration of Richard Guerra<sup>3</sup>. Defendants are not now, nor have they ever been, authorized or licensed to use, reproduce, or make counterfeits, reproductions, or colorable imitations of the of the Copyrighted Work nor are Defendants authorized or licensed to distribute the Copyrighted Work. *See* Declaration of Randy Hermann, [DE 6-1] at 10-13.

As part of its ongoing investigation regarding the sale of counterfeit and infringing products, Plaintiff hired a third party investigatory to access Defendants’ Internet based e-commerce stores operating under each of the Seller IDs. The third party investigator initiated orders from each Seller IDs for the purchase of various products, all bearing, or suspected of bearing, counterfeits of the Copyrighted Work, and requested each product to be shipped to an address in the Southern District of Florida. Accordingly, Defendants’ Goods are being promoted, advertised, offered for sale, and sold by Defendants within this district and throughout the United States. *See* Declaration of Richard Guerra [DE 6-2] at 5. A representative for Plaintiff personally analyzed the products offered for sale which incorporated unauthorized reproductions and/or derivatives of the Copyrighted Work at issue in this action, wherein orders were initiated via each of the Seller IDs by reviewing the e-commerce stores operating under each of the Seller IDs, or the detailed web page captures and images of the items bearing the Copyrighted Work, and concluded the products were non-genuine, unauthorized products. *See* Declaration of Randy Hermann, [DE 6-1] at 13.

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<sup>3</sup> Evidence of each Defendant’s infringement was attached as Exhibit 1 to the Declaration of Richard Guerra in Support of Plaintiff’s Motion for Entry of Final Default Judgment. Due to the size restriction for filing with the CM/ECF, the exhibit to the declaration was filed separately, in parts, in order to meet the maximum allowable size constraints on July 12, 2022.

### **III. ANALYSIS**

#### **A. Claims**

##### **1. Infringement of Copyright (Count I)**

To prevail on a claim of direct infringement of copyright pursuant to the Copyright Act, 17 U.S.C. §§ 106(1), (3) and (4), Plaintiff must “satisfy two requirements to present a *prima facie* case of direct copyright infringement: (1) they must show ownership of the allegedly infringed material, and (2) they must demonstrate that the alleged infringers violated at least one exclusive right granted to copyright holders under 17 U.S.C. § 106.” *A&M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004, 1013 (9th Cir. 2001). *See also Disney Enters. v. Hotfile Corp.*, Case No. 11-20427-CIV-Williams, 2013 U.S. Dist. LEXIS 172339, at \*94 (S.D. Fla. 2013).

#### **B. Liability**

The well-pled factual allegations of Plaintiff’s Complaint properly allege the elements for the claim as described above. *See* [DE 1]. Moreover, the factual allegations in Plaintiff’s Complaint have been substantiated by sworn declarations and other evidence and establish Defendants’ liability under the claim asserted in the Complaint. Accordingly, default judgment pursuant to Federal Rule of Civil Procedure 55 is appropriate.

#### **C. Injunctive Relief**

Pursuant to the Copyright Act, a district court is authorized to issue an injunction “on such terms as it may deem reasonable to prevent or restrain infringement of a copyright.” *See* 17 U.S.C. § 502(a). Indeed, injunctive relief is the remedy of choice where 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

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