

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**Case No. 21-cv-22703-BLOOM/Otazo-Reyes**

SAFETY NAILER LLC,

Plaintiff,

v.

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

Defendants.

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**ORDER ON RENEWED AND AMENDED MOTION FOR  
ENTRY OF FINAL JUDGMENT BY DEFAULT AS TO CERTAIN DEFENDANTS**

**THIS CAUSE** is before the Court upon Plaintiff SAFETY NAILER LLC's ("SNLLC" or "Plaintiff") Renewed and Amended Motion for Entry of Final Judgment by Default, ECF No. [77] ("Motion"), filed on December 28, 2021. A Clerk's Default was entered against Defendants listed in Schedule "A" to the Complaint as 1-115, 119, 126, 127, 130, 138, 144, 158, 162, 163, 165, 166, 168, 171, 173, 174, 185, 187, 188, 193, 200, 205, 211-213, 215-216 (collectively, "Defendants"), and other defendants, on November 15, 2021. ECF No. [58].<sup>1</sup> Defendants failed to appear, answer, or otherwise plead to the Complaint despite having been served.

On November 30, 2021, Plaintiff filed a Motion for Entry of Final Judgment by Default. ECF No. [63]. On December 14, 2021, the Court denied the Motion for Entry of Final Judgment without prejudice, ordering Plaintiff to: (1) file either a report as to the status of service of process

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<sup>1</sup> This Order does not apply to entities identified in Schedule "A" who have been dismissed from the case. Any references to "Defendants" in this Order are to Defendants listed in Schedule "A" to the Complaint as 1-115, 119, 126, 127, 130, 138, 144, 158, 162, 163, 165, 166, 168, 171, 173, 174, 185, 187, 188, 193, 200, 205, 211-213, and 215-216.

upon Defendants 195-198 or a Motion to Dismiss Defendants 195-198; and (2) file either a new Motion for Entry of Final Judgment by Default or a Notice of Joint Liability pursuant to the Court's subsequent Order on Default Judgment Procedures. ECF No. [72]. On December 14, 2021, Plaintiff dismissed Defendants 194-198 without prejudice. ECF No. [73]. On December 28, 2021, Plaintiff filed the instant Renewed and Amended Motion for Entry of Final Judgment by Default. ECF No. [77]. The Court has carefully considered the Motion, the record in this case, the applicable law, and is otherwise fully advised. For the following reasons, Plaintiff's Renewed and Amended Motion is granted in part and denied in part consistent with this Order.

## **I. INTRODUCTION**

Plaintiff sued Defendants for trademark counterfeiting and infringement under § 32 of the Lanham Act, 15 U.S.C. § 1114; false designation of origin pursuant to § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a); copyright infringement under the Copyright Act, 17 U.S.C. §§ 106(1), (3), (4), 501; common law unfair competition; and common law trademark infringement.

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

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 trademarks are presented to consumers; (2) defrauded consumers into thinking Defendants' illicit copies of Plaintiff's copyrighted works 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 trademarks; 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 in an action alleging trademark counterfeiting and infringement, false designation of origin, common-law unfair competition, common law trademark infringement, infringement of copyright, and infringement of patent. Plaintiff further requests that the Court: (1) enjoin Defendants' unlawful use of Plaintiff's trademarks, copyrighted works, and patent; (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 'defendant, by his default, admits the plaintiff's well-pleaded allegations of fact, is concluded on those facts by the judgment, and is barred from contesting on appeal the facts thus established.'" *Eagle Hosp. Physicians, LLC v. SRG Consulting, Inc.*, 561 F. 3d 1298, 1307 (11th Cir. 2009) (quoting *Nishimatsu Const. Co., Ltd. v. Houston Nat'l Bank*, 515 F. 2d 1200, 1206 (5th Cir. 1975)); *Buchanan v. Bowman*, 820 F.2d 359, 361 (11th Cir. 1987). "Because a 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 judgment to be entered." *Luxottica Group S.p.A. v. Individual, P'ship or Unincorporated Ass'n*, 17-CV-61471, 2017 WL 6949260, at \*2

(S.D. Fla. Oct. 3, 2017); *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 . . .”).

If there are multiple defendants, the plaintiff must state in the Motion for Default Final Judgment that there are no allegations of joint and several liability, and set forth the basis why there is no possibility of inconsistent liability. Generally, if one defendant – who is alleged to be jointly and severally liable with other defendants – defaults, judgment should not be entered against that defendant until the matter is adjudicated against the remaining defendants. *See* 10A Charles Alan Wright and Arthur R. Miller, *Federal Practice and Procedure* § 2690 (3d ed. 1998) (citing *Frow v. De La Vega*, 82 U.S. 552, 554 (1872) (“[A] final decree on the merits against the defaulting defendant alone, pending the continuance of the cause, would be incongruous and illegal.”)). “Even when defendants are similarly situated, but not jointly liable, judgment should not be entered against a defaulting defendant if the other defendant prevails on the merits.” *Gulf Coast Fans, Inc. v. Midwest Elecs. Imp., Inc.*, 740 F.2d 1499, 1512 (11th Cir. 1984).

Here, Plaintiff has stated in its Motion that there are no allegations of joint and several liability with respect to damages. Defendants remaining in the case have not appeared and have defaulted. Therefore, there is no possibility of inconsistent liability among the remaining Defendants and an adjudication may be entered. Therefore, upon a review of Plaintiff’s submissions, the Court finds there is a sufficient basis in the pleading for the default judgment to be entered in favor of Plaintiff with respect to the defaulting Defendants.

## II. FACTUAL BACKGROUND

Plaintiff is the registered owner of the trademark SAFETY NAILER, U.S. Reg. No. 5,544,356 for “Hand tools, namely, clamps” in International Class 8, registered on August 21,

2018, on the Principal Register of the United States Patent and Trademark Office (“SAFETY NAILER Mark”). Plaintiff has exclusive rights in and to the SAFETY NAILER Mark. Plaintiff is the owner of copyrights in photographs that Plaintiff uses to market and advertise its SAFETY NAILER products. Plaintiff registered its photographs with the Register of Copyrights on May 25, 2021, and was assigned the registration numbers VA 2-252-882 and VA 2-252-876 (“Copyrighted Works”). Plaintiff is the owner of U.S. Patent No. US 8,806,983 (“‘983 Patent”) entitled “Holder For Fasteners[.]” The ‘938 Patent relates to holders for holding nails while shielding the user’s fingers from being struck by a hammer. SNLLC marks its SAFETY NAILER products, the Framing Nailer version and the Finish Nailer version, with the ‘938 Patent number.

Defendants, through the various Internet based e-commerce stores operating under each of the Seller IDs identified on Schedule “A” have advertised, promoted, offered for distribution, and/or distributed products using counterfeits, infringements, reproductions, and/or colorable imitations of the SAFETY NAILER Mark, Copyrighted Works, and ‘938 Patent. Plaintiff has submitted sufficient evidence showing each Defendant has infringed, at least, one or more of the SAFETY NAILER Mark, Copyrighted Works, and ‘938 Patent. 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 SAFETY NAILER Mark or Patent, and/or reproduce or distribute the Copyrighted Works.

As part of its ongoing investigation regarding the sale of counterfeit and infringing products, SNLLC has an anticounterfeiting program that regularly investigates suspicious websites and online marketplace listings identified in proactive Internet sweeps and reported by consumers. These investigations have established that Defendants are using the various webstores on platforms such as Amazon, Wish, eBay, AliExpress, Alibaba, DHGate, Joom, NewEgg, Shopify, and others

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