

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

MONSTER ENERGY COMPANY,	)	
	)	Case No. 17-cv-414
Plaintiff,	)	
	)	Judge Robert M. Dow, Jr.
v.	)	
	)	
ZHENG PENG, et al.,	)	
	)	
Defendants.	)	
_____	)	

**MEMORANDUM OPINION AND ORDER AND FINAL JUDGMENT**

Monster Energy Company (“MEC” or “Plaintiff”) brings this action for federal trademark infringement and counterfeiting (Count I), false designation of origin (Count II), violation of the Illinois Uniform Deceptive Trade Practices Act (“UDTPA”) (Count III), and federal copyright infringement (Count IV) and seeking statutory damages and injunctive relief against the Defendants identified by and operating at least the Internet stores kungfugraphics, Best Auto Company Store, maple-today, lijingyan\_0, kind-company, willingstore16, changliang1990, Mustoe-China, huizheng1029, qiushuangwuqing, hydro, benshunbao2014\_5, Wynn Bibi, haiyang20910, 3349776, easel, and luxury86 (collectively, “Defendants”).

This matter is before the Court on Plaintiff’s motion for summary judgment [47]. Defendants have failed to respond to the motion. For the reasons explained below, the Court grants Plaintiff’s motion for summary judgment [47] and enters summary judgment in favor of Plaintiff on its claims for federal trademark infringement and counterfeiting (Count I), false designation of origin (Count II), violation of the UDTPA (Count III), and federal copyright infringement (Count IV). The Court also enters a permanent injunction and awards Plaintiff its attorneys’ fees and costs. Final Judgment is entered for Plaintiff and against Defendants.

Plaintiff may file a bill of costs and fee petition by November 22, 2017; if Defendants wish to respond to either or both, they may do so by December 20, 2017; Plaintiff's reply, if any, is due by January 8, 2018. The Court will issue a ruling by mail on costs and attorneys' fees.

**I. Background**

**A. Local Rule 56.1**

The Court takes the relevant facts primarily from Plaintiff's Local Rule 56.1 Statement of Material Facts and supporting exhibits. See [49], [50], [51], [52]. Defendants failed to respond to Plaintiff's Local Rule 56.1 Statement of Material Facts, and therefore admit all facts set forth therein. See Local Rule 56.1(b)(3)(C) ("All material facts set forth in the statement required of the moving party will be deemed to be admitted unless controverted by the statement of the opposing party."); *Friend v. Valley View Cmty. Unit Sch. Dist.* 365U, 789 F.3d 707, 710 (7th Cir. 2015) (district court properly deemed admitted facts asserted by defendants as penalty for student's noncompliance with Local Rule 56.1); *Mintjal v. Prof'l Benefit Trust*, 146 F. Supp. 3d 981, 985 (N.D. Ill. 2015) ("the penalty for failing to properly respond to a movant's 56.1(a) statement is usually summary judgment for the movant (at least if the movant has done his or her job correctly) because the movant's factual allegations are deemed admitted" (internal quotation marks and citation omitted)).

**B. Plaintiff**

Plaintiff develops, markets, sells and distributes beverages, including energy drinks. In 2002, Plaintiff launched its MONSTER ENERGY® brand of drinks, bearing its MONSTER ENERGY mark ("Claw Icon Mark") and copyrighted design ("Monster Energy Copyrighted Design"):



Plaintiff also use the Claw Icon Mark and Monster Energy Copyrighted Design in connection with a large variety of other products, including, but not limited to, stickers, clothing items, helmets, headgear, sports gear, and sports bags that bear the Claw Icon Mark, MONSTER™ mark, MONSTER ENERGY® MARK, and/or the Monster Energy Copyrighted Design (collectively, the “Monster Energy Products”).

Since the initial launch of its original MONSTER ENERGY® drink in 2002, Plaintiff’s Claw Icon Mark, MONSTER™ mark, MONSTER ENERGY® mark, and the Monster Energy Copyrighted Design are and have been the subject of substantial and continuous marketing and promotion by Plaintiff in connection with its MONSTER™ line of drinks and MONSTER™ apparel and accessories.

### **C. Plaintiff’s Trademarks**

Plaintiff holds numerous U.S. federal trademark registrations for its trademarks, including the trademark registrations set forth in the chart at the end of this opinion (collectively referred to herein as the “MONSTER ENERGY Trademarks”). The MONSTER ENERGY Trademarks are valid, subsisting, and in full force and effect. Pursuant to 15 U.S.C. § 1065, U.S. Trademark Registration Nos. 3,963,669 and 3,963,668 are incontestable (the “Incontestable MONSTER ENERGY Trademarks”). Incontestable status under 15 U.S.C. § 1065 provides that the registrations for the Incontestable MONSTER ENERGY Trademarks are “conclusive evidence of the validity of the registered mark and of the registration of the mark, of the

registrant's ownership of the mark, and of the registrant's exclusive right to use the registered mark in commerce.” 15 U.S.C. §§ 1115(b).

**D. Plaintiff’s Copyrighted Design**

Plaintiff is the owner of the Monster Energy Copyrighted Design, which it has registered with the United States Copyright Office. The registrations include, but are not limited to, “Stylized claw with jagged edges (original version)” (U.S. Copyright Registration No. VA 1-789-900), issued by the Register of Copyrights on October 11, 2011, and the corresponding supplemental registration changing ownership name from Hansen Beverages Company to Monster Energy Company: VA 1-433-242.

**E. Defendants**

Defendants have engaged in the advertising, offering for sale, and/or selling unauthorized and unlicensed products using counterfeit reproductions of Plaintiff’s federally registered, famous and well-known trademarks, unauthorized copies of Plaintiff’s federally registered copyright designs, or both through the fully interactive, commercial Internet stores kungfugraphics, BestAuto Company Store, maple-today, lijingyan\_0, kind-company, willingstore16, changliang1990, MKStore-China, huizheng1029, qiushuangwuqing, hwydo, benshunbao2014\_5, wynnibibi, haiyang20910, 3349776, erasable, and luxury86 (the “Defendant Internet Stores”). Specifically, Defendants offered for sale and/or sold unauthorized and unlicensed gloves, stickers and/or decals, backpacks and sports helmets using counterfeit reproductions of the MONSTER ENERGY Trademarks. Defendants also offered for sale and/or sold unauthorized and unlicensed automotive accessories bearing unauthorized copies of the Monster Energy Copyrighted Design.

Plaintiff has not authorized or licensed the Defendants to use the MONSTER ENERGY Trademarks or the Monster Energy Copyrighted Design on or in connection with the Defendant Internet Stores. Defendants are not authorized retailers of genuine Monster Energy Products, and the products advertised, offered for sale and/or sold on the Defendant Internet Stores are not genuine Monster Energy Products.

## **II. Summary Judgment Standard**

Summary judgment is proper where “the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). “A party asserting that a fact cannot be or is genuinely disputed must support the assertion by . . . citing to particular parts of materials in the record” or “showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.” Fed. R. Civ. P. 56(c)(1). A genuine issue of material fact exists if “the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The party seeking summary judgment has the burden of establishing the lack of any genuine issue of material fact. See *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The Court “must construe all facts and draw all reasonable inferences in the light most favorable to the nonmoving party.” *Majors v. Gen. Elec. Co.*, 714 F.3d 527, 532-33 (7th Cir. 2013) (citation omitted).

To avoid summary judgment, the nonmoving party must go beyond the pleadings and “set forth specific facts showing that there is a genuine issue for trial.” *Liberty Lobby*, 477 U.S. at 250. Summary judgment is proper if the nonmoving party “fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” *Ellis v. CCA of Tennessee LLC*, 650 F.3d 640, 646 (7th Cir.

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