UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ADAMA STUDIOS LLC and TERRA STUDIO LTD.,

Plaintiffs,

-against-

SHUNCHAO TANG a/k/a VERTPLANTER.COM,

Defendant.

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ORDER

23-cv-05842 (JMA) (ARL)

AZRACK, United States District Judge:

Before the Court is Plaintiff Adama Studios LLC and Terra Studio Ltd.'s ("Plaintiffs") motion for default judgment ("Motion") against Defendant Shunchao Tang, also known as Vertplanter.com ("Defendant"). For the below reasons, Plaintiffs' Motion is GRANTED IN PART and DENIED IN PART.

I. DISCUSSION

A. Defendant Defaulted.

On August 1, 2023, Plaintiffs commenced this action ("Action") by filing a Complaint against Defendant, which alleged federal claims of patent infringement, copyright infringement, trademark infringement, unfair competition, and false advertising.[1] (See ECF No. 1 ("Compl").) On August 22, 2023, Defendant was properly served with a copy of the Summons and Complaint. (See ECF No. 10.)

Following expiration of Defendant's deadline to respond to Plaintiffs' Complaint, Plaintiffs requested a Certificate of Default from the Clerk of this Court ("Clerk") on September 20, 2023. (See ECF No. 12.) The same day, the Clerk entered a Certificate of Default against Defendant. (See ECF No. 13.)

[1] Plaintiffs also brought claims for (i) common law unfair competition and (ii) deceptive businesses practices and advertisement under New York Law. (See Compl., ECF No. 1.)

On November 2, 2023, the Court directed Plaintiffs to file the instant Motion for Default Judgment against Defendant. (See Elec. Order, Nov. 2, 2023.) On November 15, 2023, Plaintiffs did so. (See ECF No. 14-1 ("Pls.' Mot.").) To this day, Defendant has failed to respond to this Action in any way.

B. Liability.

The Federal Rules of Civil Procedure prescribe a two-step process for a plaintiff to obtain a default judgment. First, "[w]hen 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). Second, after a default has been entered against the defendant, and provided the defendant failed to appear and move to set aside the default, this Court may, on a plaintiff's motion, enter a default judgment. See FED. R. CIV. P. 55(b)(2).

Before imposing a default judgment, this Court must accept well-pled allegations "as true" and determine whether they establish the defendant's liability as a matter of law. Bricklayers & Allied Craftworkers Local 2 v. Moulton Masonry & Constr., LLC, 779 F.3d 182, 187 (2d Cir. 2015) (per curiam).

In their Motion, Plaintiffs contend they have established liability on their claims against Defendant for (i) patent infringement; (ii) copyright infringement; (iii) federal trademark infringement; and (iv) federal false advertising.[2] (See Compl. ¶¶ 35–52, 59–63, ECF No. 1.) The Court examines each claim in turn.

1. Patent Infringement.

Plaintiffs allege Defendant is liable for both direct and indirect infringement of Plaintiffs' patent in violation of the Patent Act, 35 U.S.C. § 271. Under the Patent Act, "whoever without

[2] Plaintiffs also bring claims for (i) federal unfair competition, (ii) common law unfair competition, and (iii) deceptive businesses practices and advertisement under New York Law. (See Compl. ¶¶ 53–58, 64–70, ECF No. 1.) But Plaintiffs do not move for default judgment on these claims.

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). There are "five elements of a patent infringement pleading, to (i) allege ownership of the patent, (ii) name each defendant, (iii) cite the patent that is allegedly infringed, (iv) state the means by which the defendant allegedly infringes, and (v) point to the sections of the patent law invoked." Hall v. Bed Bath & Beyond, Inc., 705 F.3d 1357, 1362 (Fed. Cir. 2013) (citing Phonometrics, Inc. v. Hosp. Franchise Sys., Inc., 203 F.3d 790, 794 (Fed. Cir. 2000)); see also Display Techs., LLC v. Leantegra, Inc., 2022 WL 354667, at *3 (S.D.N.Y. Feb. 7, 2022).

Plaintiffs have satisfied each of the five elements required to establish Defendant's liability for patent infringement. First, Plaintiffs allege Terra Studio Ltd. owns one patent pertaining to its tevaplanter® Product: United States Patent No. 11,576,315 ("the '315 Patent"). (See Compl. ¶¶ 35–40; see also Ex. A, ECF No. 1-1.) Second, Plaintiffs identify the Defendant, Vertplanter.com, as the business selling the infringing product ("VertPlanter"). (See id. ¶ 3.) Third, Plaintiffs specifically cite to the aforementioned patent as the one being infringed. (Id. ¶¶ 37–39.) Fourth, Plaintiffs state how Defendant infringed their patent. (Id. ¶ 37.) Finally, Plaintiffs have specified that Defendant violated patent law 35 U.S.C. § 271. (Id. ¶¶ 35–40.)

Having satisfied all five elements, default judgment is granted in Plaintiffs' favor for direct patent infringement claims under 35 U.S.C. § 271(a). Because this Court finds Defendant liable for direct patent infringement under 35 U.S.C. § 271(a) for Terra Studio's '315 Patent, it need not address Plaintiffs' additional theory of indirect infringement. See 35 U.S.C. § 271(b)–(c).

2. Copyright Infringement.

Plaintiffs allege that Defendant has infringed, and continues to infringe, Plaintiff Adama Studios' copyrighted text, photographs, and graphics in violation of the Copyright Act, 17 U.S.C.

§§ 106 & 501. (See Compl. ¶¶ 41–47.) "The Copyright Act grants the owner of the copyright the exclusive right to authorize the reproduction, distribution, and preparation of derivatives of the owner's work." Otto v. Hearst Commc'ns, Inc., 345 F. Supp. 3d 412, 424 (S.D.N.Y. 2018) (citing Harper & Row Publishers, Inc. v. Nation Enters., 471 U.S. 539, 546–47 (1985)). The Court concludes that Plaintiffs' allegations of copyright infringement in violation of 17 U.S.C. § 501 are well-pled and sufficient to establish liability.

To prevail on a copyright infringement claim, a plaintiff must demonstrate: "(i) ownership of a valid copyright; and (ii) unauthorized copying of the copyrighted work." Jorgensen v. Epic/Sony Recs., 351 F.3d 46, 51 (2d Cir. 2003) (citing Feist Publ'ns, Inc. v. Rural Tel. Serv. Co., 499 U.S. 340, 361 (1991)). "A certificate of registration from the United States Register of Copyrights constitutes prima facie evidence of the valid ownership of a copyright." Id. (citing 17 U.S.C. § 410(c)).

Under the first prong, Plaintiffs have sufficiently alleged that Adama Studios is the sole owner of text, photographs, and graphics works pertaining to its kickstarter.com website that promoted the tevaplanter® product, which is covered by U.S. Copyright Registration No. TXu 2-381-272. (See Compl. ¶ 20; see also Ex. C, ECF No. 1-3.)

To satisfy the second prong, "a plaintiff must demonstrate that: '(1) the defendant has actually copied the plaintiff's work; and (2) the copying is illegal because a substantial similarity exists between the defendant's work and the protectible elements of plaintiff's [work].'" Spin Master Ltd. v. 158, 463 F. Supp. 3d 348, 369 (S.D.N.Y. 2020) (quoting Yurman Design, Inc. v. PAJ Inc., 262 F.3d 101, 110 (2d Cir. 2001) (alteration in original)).

Plaintiffs satisfy the first element because Defendant directly copied from Adama Studios' kickstarter.com website the text, photographs, and graphics works relating to the tevaplanter® product (i) when it created its own website, Vertplanter.com; and (ii) when it created an

instructional insert used in connection with VertPlanter product. (See Compl. ¶¶ 26–27, 42–46; see also Ex. E, ECF No. 1-5.)

Plaintiffs satisfy the second element because they established a "substantial similarity" between the two texts, photographs, and graphics works relating to the tevaplanter® product. Here, Plaintiffs show that an "ordinary observer, unless he set out to detect the disparities, would be disposed to overlook them, and regard their aesthetic appeal as the same." Hamil Am. Inc. v. GFI, 193 F.3d 92, 100 (2d Cir. 1999) (quoting Peter Pan Fabrics, Inc. v. Martin Weiner Corp., 274 F.2d 487, 489 (2d Cir. 1960) (L. Hand, J.)). A side-by-side comparison of Plaintiffs' and Defendant's works products reveals a clear substantial similarity. (See Ex. E, ECF No. 1-5.)

Accordingly, Plaintiffs have successfully demonstrated copyright infringement, and default judgment is granted in their favor for the claim.

3. Federal Trademark Infringement.

To succeed on a trademark infringement claim, Plaintiffs must allege that "(1) it has a valid mark that is entitled to protection under the Lanham Act; and that (2) the defendant used the mark, (3) in commerce, (4) 'in connection with the sale ... or advertising of goods or services,' (5) without the plaintiff's consent." Canon U.S.A., Inc. v. F & E Trading LLC, 2017 WL 4357339, at *5 (E.D.N.Y. Sept. 29, 2017) (quoting 1–800 Contacts, Inc. v. WhenU.Com, Inc., 414 F.3d 400, 406 (2d Cir. 2005), cert denied, 546 U.S. 1033 (2005)). Additionally, "the plaintiff[s] must show that defendant's use of that mark 'is likely to cause confusion ... as to the affiliation, connection, or association of [defendant] with [plaintiffs], or as to the origin, sponsorship, or approval of [the defendant's] goods, services, or commercial activities by [plaintiffs].'" 1–800 Contacts, 414 F.3d at 406 (quoting 15 U.S.C. § 1125(a)(1)(A)) (alterations in original); see also Estee Lauder Inc. v. The Gap, Inc., 108 F.3d 1503, 1508–09 (2d Cir. 1997).

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