

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

POWERWAND INC. ,
Plaintiff,

v.

HEFAI NENIANG TRADING CO., LTD.
and TAO HAN,
Defendants.

CASE NO. 2:22-cv-01413-JHC

ORDER GRANTING MOTION FOR
DEFAULT JUDGMENT

I

INTRODUCTION

This matter comes before the Court on Plaintiff Powerwand Inc.'s Motion for Default Judgment against Defendants Hefai Neniang Trading Co., Ltd. and Tao Han. Dkt. # 14. The motion is unopposed. *See generally* Dkt. The Court has considered the motion, the record, and the applicable law. Being fully advised, the Court GRANTS the motion.

II

BACKGROUND

Powerwand is a Texas-based corporation that designs and sells custom apparel. Dkt. # 1 at 2–4. Powerwand owns exclusive rights to various intellectual property, including copyright

1 protection for 19 original photographs and trademark registration for the “INAKA” family of
2 brands. *Id.* at 5, 11. Defendant Hefai Neniang Trading is a Chinese corporation and retailer with
3 an ecommerce storefront on Amazon.com (Amazon). *Id.* at 2. Defendant Tao Han is the legal
4 representative and sole shareholder of Hefai Neniang Trading. *Id.*

5 In February and May 2022, Powerwand shared photos on social media to promote the
6 launch of its new apparel and designs. *Id.* at 4. Soon after, Defendants listed and began offering
7 nine new shorts products on their Amazon storefront. *Id.* Defendants’ offerings incorporated
8 Powerwand’s trademarked designs, referenced “Inaka” in the listing titles, and included identical
9 images to the product photos from Powerwand’s social media sites. *Id.* at 4–5.

10 On September 17, 2022, Powerwand filed 25 notices through Amazon’s online Digital
11 Millennium Copyright Act (DMCA) complaint process, requesting that Amazon remove 25 of
12 Defendants’ product listings for displaying Powerwand’s copyrighted and trademarked material
13 without authorization. *Id.* at 5. Amazon took down the challenged listings the next day. *Id.* at 6.
14 Defendants responded to the takedown notices by filing 25 counter-notifications with Amazon’s
15 DMCA system. *Id.* Powerwand received notice of the counter-notifications from Amazon on
16 September 20, 2022 and filed this action on October 4, 2022. *Id.*

17 Powerwand served Defendants by email in January 2023 after the Court granted leave to
18 serve process by alternative means. Dkt. ## 10, 11. The Clerk entered an Order of Default
19 against Defendants in May 2023. Dkt. # 13. Powerwand then filed the motion at issue, seeking
20 default judgment, monetary damages, and permanent injunctive relief. Dkt. # 14.

III

DISCUSSION

A. Legal Standards

If a defendant fails to plead or otherwise defend, the clerk enters the party's default. Fed. R. Civ. P. 55(a). Then, upon a plaintiff's request or motion, the court may grant default judgment for the plaintiff. Fed. R. Civ. P. 55(b)(2); *see Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980). On default judgment motions, "[t]he court must accept all well-pled allegations of the complaint as established fact, except allegations related to the amount of damages." *UN4 Prods., Inc. v. Primozich*, 372 F. Supp. 3d 1129, 1133 (W.D. Wash. 2019) (citing *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917–18 (9th Cir. 1987)). Courts typically consider these seven "Eitel" factors when evaluating a request for a default judgment:

(1) the possibility of prejudice to the plaintiff, (2) the merits of plaintiff's substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at stake in the action; (5) the possibility of a dispute concerning material facts; (6) whether the default was due to excusable neglect, and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits.

Eitel v. McCool, 782 F.2d 1470, 1471–72 (9th Cir. 1986). Because default judgments are generally disfavored, "default judgment is appropriate only if the well-pleaded factual allegations of the complaint suffice to establish a plaintiff's entitlement to a judgment under the applicable law." *Dentist Ins. Co. v. Luke St. Marie Valley Dental Grp., P.L.L.C.*, No. 2:21-cv-01229-JHC, 2022 WL 1984124, at *2 (W.D. Wash. Jun. 6, 2022) (citing *DIRECTV, Inc. v. Hoa Huynh*, 503 F.3d 847, 855 (9th Cir. 2007)).

B. Application of *Eitel* Factors

All seven *Eitel* factors support Powerwand's motion. Default judgment is therefore an appropriate remedy in this case.

1 1. Prejudice to Plaintiff

2 “[P]rejudice exists where the plaintiff has no recourse for recovery other than default
3 judgment.” *Curtis v. Illumination Arts, Inc.*, 33 F. Supp. 3d 1200, 1211 (W.D. Wash. 2014)
4 (citation and internal quotation marks omitted). As Defendants have failed to respond to this
5 action, default judgment is Powerwand’s only means for recovery. *See Eve Nevada, LLC v.*
6 *Derbyshire*, No. 21-0251-LK, 2022 WL 279030, at *3 (W.D. Wash. Jan. 31, 2022) (first *Eitel*
7 factor favors entry of default judgment when the defendant “failed to respond or otherwise put
8 forth a defense”). Thus, this factor supports default judgment.

9 2. Merits of Plaintiff’s claims and sufficiency of complaint

10 “Courts often consider the second and third *Eitel* factors together.” *Developers Sur. and*
11 *Indem. Co. v. View Point Builders, Inc.*, No. C20-0221JLR, 2020 WL 3303046, at *5 (W.D.
12 Wash. Jun. 17, 2022). As noted above, for the purpose of this motion, the Court must accept all
13 well-pleaded allegations in the complaint as true. *See UN4 Prods*, 372 F. Supp. 3d at 1133.
14 Accepting such allegations, the Court finds that the second and third *Eitel* factors support default
15 judgment for all five claims.

16 (a) Direct copyright infringement (claim one)

17 Powerwand alleges that Defendants engaged in direct and willful copyright infringement
18 in violation of the Copyright Act. Dkt. # 14 at 4. To establish a claim for direct copyright
19 infringement, a plaintiff must 1) “show ownership of the allegedly infringed material” and 2)
20 “demonstrate that the alleged infringers violate at least one exclusive right granted to copyright
21 holders under 17 U.S.C. § 106.” *A&M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004, 1013 (9th
22 Cir. 2001). To prove that a defendant engaged in willful copyright infringement, “the plaintiff
23 must show (1) that the defendant was actually aware of the infringing activity, or (2) that the
24 defendant’s actions were the result of ‘reckless disregard’ for, or ‘willful blindness’ to, the

1 copyright holder's rights." *Louis Vuitton Malletier, S.A. v. Akanoc Sols., Inc.*, 658 F.3d 936, 944
2 (9th Cir. 2011) (quoting *Island Software & Comput. Serv., Inc. v. Microsoft Corp.*, 413 F.3d 257,
3 263 (2d Cir. 2005)). If an infringer makes no attempt to inquire into whether the item was
4 subject to copyright protection, the infringer may be found to have acted with reckless disregard
5 or willful blindness. *See Unicolors, Inc. v. Urban Outfitters, Inc.*, 853 F.3d 980, 991 (9th Cir.
6 2017).

7 The allegations in the complaint, if taken as true, support Powerwand's copyright
8 infringement claim. Powerwand produced the 19 original photographs at issue and later secured
9 U.S. Copyright Registrations for all 19 images. Dkt. ## 1 at 7, 15 at 32–39. As the copyright
10 owner, Powerwand possesses exclusive rights under 17 U.S.C. § 106 to display, reproduce, and
11 distribute these images. Dkt. # 1 at 7. By using Powerwand's copyrighted works without
12 authorization, Defendants violated Powerwand's exclusive rights under 17 U.S.C. § 106.
13 Defendants thus directly and willfully infringed on Powerwand's copyrights under 17 U.S.C. §
14 501. *See Derek Andrew, Inc. v. Poof Apparel Corp.*, 528 F.3d 696, 702 (9th Cir. 2008)
15 (allegation of willfulness deemed admitted on default); Dkt. # 1 at 9.

16 (b) Abuse of DMCA counter-notifications (claim two)

17 Under 17 U.S.C. § 512(f), "[a]ny person who knowingly materially misrepresents under
18 this section (1) that material or activity is infringing, or (2) that material or activity was removed
19 or disabled by mistake or misidentification, shall be liable for any damages." Defendants filed
20 counter-notifications with Amazon stating that "[they had] a good faith belief that the material
21 . . . was removed or disabled as a result of mistake or misidentification." Dkt. # 1 at 13.
22 Accepting Powerwand's allegations as true, Defendants' counter-notifications contained
23 materially false information. *Id.* Defendants thus violated 17 U.S.C. § 512(f) by "knowingly
24

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