

FILED



1:00 pm, 2/16/23

Margaret Botkins
Clerk of Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

MOTAMOA HOLDINGS LIMITED,

Plaintiff,

vs.

Case No. 21-CV-198-NDF

VL MEDIA LLC, ILYA
SHEVCHENKO, and VITALII SOSKOV,

Defendants.

ORDER GRANTING IN PART MOTION FOR DEFAULT JUDGMENT

The Clerk entered default against Defendant VL Media LLC (“VL Media” or “Magicbird”) on January 14, 2022 after the Defendant was served and failed to answer or otherwise defend against the Complaint by Plaintiff Motamoa Holdings Limited (“Motamoa” or “Metalbird”). ECF 11. The Plaintiff now moves for default judgment against VL Media under Federal Rule of Civil Procedure 55(b)(2).¹ ECF 34. For the reasons below, the motion is GRANTED in part.

I. Background Facts

The Court takes the following facts from Plaintiff’s complaint, ECF 1.

a. Facts Regarding Plaintiff Motamoa

¹ This motion does not seek default judgment against Vitalii Soskov or Ilya Shevchenko who are also defendants in this case. For purposes of this Order, “Defendant” refers only to VL Media.

Plaintiff Motamoa is a New Zealand limited company with its principal place of business in New Zealand. Since 2009, Plaintiff Motamoa, doing business as Metalbird under the Metalbird trademark, (“METALBIRD Mark”), has sold lifelike two-dimensional metal silhouette sculptures of birds that can be affixed to a post or tree by hammering-in part of the sculpture itself. Motamoa has invested substantial time and effort in creating and protecting these unique handcrafted designs. As a result, these proprietary designs are recognizable and identify Metalbird as the source of these distinctive designs.

Since 2016, Metalbird has generated substantial revenue and product sales in the United States, which support that the Metalbird name is distinctive in the marketplace. Moreover, customers associated with the products indicate Metalbird as the source. The extensive use and advertising of the METALBIRD Mark has resulted in public recognition that Metalbird is the source of well-known and high-quality artwork and retail services.

Plaintiff maintains internet websites at domain names incorporating its METALBIRD Mark. The domain name www.metalbird.com ("Metalbird Website") was originally registered in 2004 and has been owned by Metalbird and its licensees and predecessors since 2016. The Metalbird Website currently offers the following beautifully crafted works of art and sculptures (among others): *Hummingbird, Cardinal, Chickadees & Chicks, Bird Feeder, Hummingbird Honeys, Great Horned Owl, Kissing Cardinals, Woodpecker, Bald Eagle, Pair of Swallows, House Finch, Chickadee, Blue Jay, Nuthatch, Wren, Road Runner, Peregrine Falcon, Crow, Pelican, Mockingbird, Belted Kingfisher, Puffin, Fantail, Bat and Turkey* (“Metalbird Works of Art”).

Metalbird's social media accounts prominently feature the Metalbird brand. To distinguish itself from its Metalbird locations outside of the United States, Metalbird uses the designation Metalbird USA on its primary social media accounts.

On or around November 2019, Glass Elephant, Metalbird's digital ad agency, and Vitalii Soskov helped create a video for Metalbird that prominently featured the Metalbird name and was used to showcase and promote Metalbird and its products to the United States marketplace ("Metalbird Hero Ad"). The Metalbird Hero Ad is wholly original and owned exclusively by Metalbird.

Metalbird uses the METALBIRD Mark and designs in advertising, marketing, and promotional materials on a nationwide basis through various media, including but not limited to, the internet, print, radio, tradeshow, PR, transit media and influencer marketing. The success of Metalbird's Works of Art is due, in part, to the extensive promotion and advertising it has undertaken for the METALBIRD Mark and designs. Metalbird annually spends in excess of several million United States dollars on advertising, marketing and promotional efforts for the METALBIRD Mark and designs. The METALBIRD Mark and designs are assets of incalculable value and identifiers of Metalbird's goods and services, and goodwill.

The Metalbird Works of Art and the Metalbird Website, which is a compilation, are wholly original. In 2021, Motamoa applied for, and was granted, copyright registrations for the Metalbird Website and certain Metalbird Works of Art.

b. Facts Regarding Defendant VL Media

Vitalii Soskov is a Russian citizen that previously resided in New Zealand and is believed to reside in Turkey. Beginning in September 2019 until sometime in March 2021, Soskov worked for Glass Elephant, a digital ad agency based in New Zealand. As part of his job responsibilities, Soskov was the creative lead and managed all digital advertising for Metalbird, including creating and designing ads, and their placement. Soskov left his position at Glass Elephant in March 2021.

Ilya Shevchenko claims to own VL Media, which does business as Magicbird, and resides in Auckland, New Zealand. Soskov and Shevchenko manage and direct VL Media's conduct at issue in this case.

On March 18, 2021, the entity VL Media LLC was organized with the State of Wyoming and has an address in Sheridan, Wyoming. The State of Wyoming records do not identify any of the LLC members.

On or around August 2021, Defendant launched the Magicbird e-commerce website offering for sale bird silhouettes and works of art ("Magicbird Website"). Defendant sells the bird silhouettes to customers in the United States and around the world and the Magicbird Website allows customers to select their language and currency, such as United States dollars.

Magicbird's website currently offers multiple designs and works of art, including but not limited to, *Hummingbird, Pair of Robins, Pair of Swallows, Pair of Sparrows, Blue Tit, Crested Tit, Blackbird, Nuthatch, European Robin, Eagle, and Woodpecker.*

On or around September or October 2021, Defendant launched a Facebook video that copied several core elements of Plaintiff's Metalbird Hero Ad. Metalbird did not authorize or license to Magicbird use of the Metalbird Hero Ad.

On or around October 2021, Defendant launched a Facebook ad and video that included a child holding Plaintiff's package that prominently featured METALBIRD Mark. As part of the advertisement, Magicbird added the comment "Opening a Magicbird box is an experience for the whole family!" Defendant subsequently removed the infringing ad from Facebook after discussions with Metalbird.

Defendant had actual knowledge of Metalbird's use and prior rights because Soskov had direct responsibility for Metalbird's digital advertising creation and strategy. Defendant has had actual notice of Metalbird's claims and rights since mid-October 2021 and continued with their infringing conduct since that date.

II. Analysis

A. Subject-Matter and Personal Jurisdiction

The Court must have both personal and subject matter jurisdiction to enter a valid judgment. *See Williams v. Life Savings and Loan*, 802 F.2d 1200, 1202-03 (10th Cir. 1986). The Court has federal question subject matter jurisdiction over Plaintiff's claims for copyright infringement under 17 U.S.C. § 101 *et seq.* and claims for trademark infringement and unfair competition under the Lanham Act 15 U.S.C. § 1125. *See* 28 U.S.C. § 1331. The Court has supplemental jurisdiction over Plaintiff's claim of unfair competition under Wyoming common law. *See* 28 U.S.C. § 1367.

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