

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

AIRIGAN SOLUTIONS, LLC,

Plaintiff,

v.

BUFUJIUGAN, *et al.*,

Defendants.

Civil Action No. 18-1330

(Judge Fisher)

MOTION FOR ENTRY OF DEFAULT JUDGMENT AND PERMANENT INJUNCTION

Pursuant to the Order of January 17, 2019 (*Document No [45]*), and in accordance Federal Rule of Civil Procedure 55(b)(2), Plaintiff respectfully submits this Motion for Default Judgment and Permanent Injunction against Defendants, all of whom are in default. The grounds for this Motion are set forth in the accompanying Memorandum in Support.

Plaintiff respectfully requests the following relief against Defendants: 1) the entry of a final judgment and permanent injunction by default in order to prevent Defaulting Defendants from infringing Plaintiffs' intellectual property rights in the future; 2) individual statutory damages awards pursuant to 15 U.S.C. § 1117(c) of \$2,000,000.00 against each individual Defendant, plus post-judgment interest; 3) a post-judgment asset restraining order and 4) an order authorizing the release and transfer of Defendants' frozen assets to satisfy the damages awarded to Plaintiff.

Plaintiff also requests, if deemed necessary, the Court set the matter down for hearing for determination of damages.

Respectfully submitted,

Dated: January 28, 2019

/s/ Stanley D. Ference III
Stanley D. Ference III
Pa. ID No. 59899
courts@ferencelaw.com

Brian Samuel Malkin
Pa. ID No. 70448
bmalkin@ferencelaw.com

FERENCE & ASSOCIATES LLC
409 Broad Street
Pittsburgh, Pennsylvania 15143
(412) 741-8400 – Telephone
(412) 741-9292 – Facsimile

Attorneys for Plaintiff
Airigan Solutions, LLC

CERTIFICATE OF SERVICE

I hereby certify that on January 28, 2019, the foregoing document is being filed via the Case Management/Electronic Case Filing (CM/ECF) system; I also certify that on January 28, 2019, a true copy of the foregoing is being served via email to the e-mail addresses at which Defendants were served and via publication by posting a true and correct copy on the website www.ferencelaw.com in accordance with the October 16, 2018 Amended Order Authorizing Alternate Service

/s/ Stanley D. Ference III
Stanley D. Ference III

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

AIRIGAN SOLUTIONS, LLC,

Plaintiff,

v.

BUFUJIUGAN, *et al.*,

Defendants.

Civil Action No. 18-1330

(Judge Fischer)

**DECLARATION OF BRIAN SAMUEL MALKIN
IN SUPPORT OF MOTION FOR ENTRY OF
DEFAULT JUDGMENT AND PERMANENT INJUNCTION**

I, Brian Samuel Malkin, hereby affirm as follows:

1. I am over eighteen (18) years of age and not a party to this action. I have never been convicted of a felony or any criminal offense involving moral turpitude, and I am fully competent to attest to the matters stated herein. I have personal knowledge of every statement made in this Certificate of Service and such statements are true and correct.

2. I am an attorney with the law firm of Ference & Associates LLC, which is located at 490 Broad Street, Pittsburgh, Pennsylvania 15143.

3. I am an attorney for the Plaintiff Airigan Solutions, LLC (“Airigan” or “Plaintiff”) in the above-captioned case.

4. I make and submit this Declaration in support of Plaintiff’s Motion for Default Judgment and Permanent Injunction (hereinafter “Motion for Default Judgment”) against Defendants.

5. On October 25, 2018, Plaintiff served each Defendant with Requests for Admission, which included, *inter alia*, the following:

At all times relevant hereto, Defendant knew that Plaintiff owned both U.S. Trademark Reg. No. 5,142,630 for the word mark "NEGG and U.S. Patent No. 9,968,211 entitled "PERSONAL EGG PEELER", and Defendant knew that Plaintiff had the exclusive right to use and license its intellectual property and the goodwill associated therewith.

Despite having the knowledge that you had no license or legal authority to do so, you engaged in the activity of promoting and otherwise advertising, selling, offering for sale, and/or distributing counterfeit goods under your Seller ID or Seller IDs.

At all times relevant hereto, you have been engaged in the fraudulent promotion, advertisement, distribution, offering for sale, and/or sale of goods that are counterfeit and substandard copies of Plaintiff's genuine NEGG® egg peeler.

You intentionally make, use, offer to sell, or import into the United States counterfeit and substandard copies of Plaintiff's genuine NEGG® egg peeler with English language packaging and instructions.

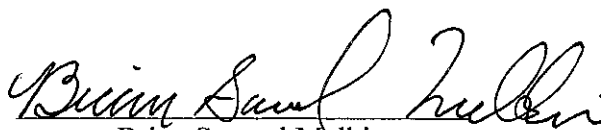
You made more than \$1,000,000.00 (United States Dollars) in profit on the sales of the counterfeit goods.

No Defendant has responded to the Requests for Admission. Thus, each Request for Admission is deemed admitted.

6. I am informed and believe that none of the Defendants are infants or incompetent persons, and upon information and belief, the Servicemembers Civil Relief Act does not apply.

I declare under the penalty of perjury laws of the United States of America that to the best of my knowledge the foregoing is true and correct.

Executed this 28th day of January, 2019, at Pittsburgh, Pennsylvania.


Brian Samuel Malkin

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

AIRIGAN SOLUTIONS, LLC,

Plaintiff,

v.

BUFUJIUGAN, *et al.*,

Defendants.

Civil Action No. 18-1330

(Judge Fischer)

[PROPOSED] FINAL DEFAULT JUDGMENT AND PERMANENT INJUNCTION

This matter comes before the Court upon Motion by Plaintiff, Airigan Solutions, LLC (“Plaintiff”) for entry of a default judgment against: the Defendants set forth in Attachment “A”, hereinafter referred to as “Defaulting Defendants”¹, for Defaulting Defendants’ trademark and patent infringement, trademark counterfeiting, false designation of origin, passing off, unfair competition, copyright infringement and related state and common law claims arising out of Defaulting Defendants’ infringing use of Plaintiff’s NEGG Marks, in their manufacturing,

¹ Defaulting Defendants are sophisticated sellers, each operating one or more commercial businesses using their respective user accounts. Defendants were and/or are systematically directing and/or targeting their business activities at consumers in the U.S., including New York, through accounts with online marketplace platforms such as Amazon.com, as well as any and all as yet undiscovered accounts with additional online marketplace platforms held by or associated with Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them (“User Accounts”). Through these User Accounts, Defendants, their respective officers, employees, agents, servants and all persons in active concert of participation with any of them, operate storefronts to manufacture, import, export, advertise, market, promote, distribute, offer for sale and/or otherwise deal in products, including the Counterfeit Products (as defined *infra*), which are held by or associated with Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them (“Merchant Storefront(s)”).

importing, exporting, advertising, marketing, promoting, distributing, displaying offering for sale and/or selling offering for sale and/or sale of Counterfeit Products.²

The Court, having considered the Declaration of Brian Samuel Malkin in support of Plaintiffs' Motion for Default Judgment and a Permanent Injunction ("Motion for Default Judgment"), the Certificate of Service of the Summons and Complaint, Entry of Default of the Clerk of Courts, and upon all other pleadings and papers on file in this Action, it is hereby ORDERED as follows (hereinafter, "Default Judgment Order"):

I. Defaulting Defendants' Liability

Judgment is granted in favor of Plaintiff on all claims asserted against Defendants in the Amended Complaint;

II. Damage Awards

IT IS FURTHER ORDERED that, because it would serve both the compensatory and punitive purposes of the Lanham Act's prohibitions on willful infringement, and because Plaintiff has sufficiently set forth the basis for the statutory damages awards requested in its Motion for Default Judgment, the Court finds that such awards are reasonable and Plaintiff is awarded statutory damages against each of the Defaulting Defendants pursuant to Section 15 U.S.C. § 1117(c) of the Lanham Act as follows, plus post-judgment interest:

² "Counterfeit Products" are substandard products bearing or using Plaintiff's registered trademark (*i.e.*, U.S. Trademark Reg. No. 5,142,630 for the wordmark "NEGG") and/or that use packaging that bears and/or is used in connection with marks and/or trade dress (hereinafter referred to as the "NEGG Marks) that is confusing or substantially similar to Plaintiff's authentic products sold using the NEGG Marks and/or that infringe at least Claim 1 of Plaintiff's U.S. Patent No. 9,968,211 entitled "PERSONAL EGG PEELER" (hereinafter referred to as "the '211 patent")

Def No.	DEFAULTING DEFENDANT	STATUTORY DAMAGE AWARD
1	bufujiugan	\$2,000,000
2	DiMshop	\$2,000,000
3	E-ADF	\$2,000,000
4	OETT-YO	\$2,000,000
5	Phase 1 Marketing	\$2,000,000
6	Smart Store !	\$2,000,000
7	advancedshop	\$2,000,000
8	BJack-LiuA	\$2,000,000
9	BossUS	\$2,000,000
10	Intercall	\$2,000,000
11	InterDeals	\$2,000,000
12	Jiaowoliudehua	\$2,000,000
13	Kelly Babbitt	\$2,000,000
14	Labu Store	\$2,000,000
15	Maideer	\$2,000,000
16	NO9ESHOP	\$2,000,000
17	Nanther	\$2,000,000
18	Ojljjhdfdi	\$2,000,000
19	Pingdi	\$2,000,000
20	Right Tools	\$2,000,000
21	SpideR	\$2,000,000
22	UniGalaxy	\$2,000,000
23	Wakstone Commerce	\$2,000,000
24	yuanzhugao	\$2,000,000

III. Permanent Injunction

A. IT IS HEREBY ORDERED that each Defendant, its officers, directors, employees, agents, subsidiaries, distributors, and all persons in active concert or participation with any Defendant, having notice of this Order shall be permanently restrained and enjoined as follows:

- (1) from manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale, selling and/or otherwise dealing in Counterfeit Products;

- (2) from secreting, concealing, destroying, altering, selling off, transferring or otherwise disposing of and/or dealing with: (i) Counterfeit Products and/or (ii) any computer files, data, business records, documents or any other records or evidence relating to their User Accounts, Merchant Storefronts or any money, securities or other property or assets of Defendants (hereinafter collectively referred to as "Defendants' Assets") and the manufacture, importation, exportation, advertising, marketing, promotion, distribution, display, offering for sale and/or sale of Counterfeit Products;
- (3) effecting assignments or transfers, forming new entities or associations, or creating and/or utilizing any other platform, User Account, Merchant Storefront or any other means of importation, exportation, advertising, marketing, promotion, distribution, display, offering for sale and/or sale of Counterfeit Products for the purposes of circumventing or otherwise avoiding the prohibitions set forth in this Order;
- (4) each Defendant, its officers, directors, employees, agents, subsidiaries, distributors, and all persons in active concert or participation with any Defendant having notice of this Order shall immediately discontinue use of any marks that are confusingly similar with the Plaintiff's NEGG ® trademark, within metatags or other markers within website source code, from use on any web page (including as the title of any product listing), from any advertising links to other websites offering Counterfeit Products for sale, from search engines' databases or cache memory, and any other form of use such that the NEGG ® trademark or a confusingly similar mark are visible to a computer user or serves to direct computer searches to a Merchant Storefront registered, owned, or operated by each Defendant, including the Merchant Storefronts operating under the Seller IDs;

- (5) each Defendant shall not transfer ownership of the User Accounts or Merchant Storefronts associated with the Seller IDs;
- (6) this Order shall apply to the Seller IDs, associated Accounts and Merchant Storefronts, and any other seller identification names, Accounts or Merchant Storefronts, or Amazon accounts which are being used by Defendants for the purpose of counterfeiting the NEGG products at issue in this action and/or unfairly competing with Plaintiff;
- (7) Amazon or any Defendant or financial institution account holder subject to this Order may petition the Court to modify the asset restraint set out in this Order; and
- (8) the Amended Alternative Service Order shall remain in effect during the pendency of this action or until further order of the Court, and Plaintiff shall serve the Defendants with a copy of this Order in accordance with the Amended Alternative Service Order.

B. IT IS FURTHER ORDERED that Amazon Services, Inc. and Amazon Payments, Inc.

(collectively "Amazon") are permanently enjoined and restrained from:

secreting, concealing, transferring, disposing of, withdrawing, encumbering or paying Defendants' Assets from or to financial accounts associated with or utilized by any Defendant or any Defendant's User Accounts or Merchant Storefront(s) (whether said account is located in the U.S. or abroad) ("Defendants' Financial Accounts");

C. IT IS FURTHER ORDERED that Amazon shall be permanently restrained and enjoined from engaging in any of the following acts or omissions:

- (1) providing services to Defendants, Defendants' User Accounts and Defendants' Merchant Storefronts, including, without limitation, continued operation of Defendants' User Accounts and Merchant Storefronts;

- (2) processing payments for any products listed under the following Amazon Standard Identification Numbers (ASINs): B01N7SXX0W (black NEGG[®]), B01MT9U0HK (red NEGG[®]), B01NATZUY2 (white NEGG[®]), B01N235WK4 (yellow NEGG[®]), B079P5N8Q6 (pink NEGG[®]), B079P6QVNR (fuschia NEGG[®]), and B079P4HPVM (green NEGG[®]), by any Seller that has not been authorized by Plaintiff; and
- (3) Amazon shall place the following Amazon Standard Identification Numbers (ASINs): B01N7SXX0W (black NEGG[®]), B01MT9U0HK (red NEGG[®]), B01NATZUY2 (white NEGG[®]), B01N235WK4 (yellow NEGG[®]), B079P5N8Q6 (pink NEGG[®]), B079P6QVNR (fuschia NEGG[®]), and B079P4HPVM (green NEGG[®]), into Amazon's gating program, so that Plaintiff will be able to control which sellers list product under these ASINs.

D. IT IS FURTHER ORDERED that Defaulting Defendants must deliver up for destruction to Plaintiffs any and all Counterfeit Products and any and all packaging, labels, tags, advertising and promotional materials and any other materials in the possession, custody or control of Defaulting Defendants that infringe any of Plaintiffs' trademarks, copyrights or other rights including, without limitation, the NEGG Marks or, bear any marks that are confusingly or substantially similar to the NEGG Marks and pursuant to 15 U.S.C. § 1118;

IV. Post-Judgment Asset Transfer and Asset Freeze Order

A. IT IS FURTHER ORDERED that in accordance with Rule 64 of the Federal Rules of Civil Procedure, 15 U.S.C. § 1116(a) and this Court's inherent equitable powers to issue remedies ancillary to its authority to provide final relief, and given the difficulties Plaintiff would have enforcing this Default Judgment Order, Defaulting Defendants' Assets from Defaulting Defendants' Financial Accounts that were and/or are attached and frozen or restrained

pursuant to the TRO and/or PI Order, or which are attached and frozen or restrained pursuant to any future order entered by the Court in this Action, (collectively, “Defaulting Defendants’ Frozen Assets” and “Defaulting Defendants’ Frozen Accounts,” respectively), are, to the extent that a given Defaulting Defendant’s Frozen Assets equal the Defaulting Defendants’ Individual Damages Award, hereby released and transferred to Plaintiff as full satisfaction of the Defaulting Defendants’ Individual Damages Award for that Defaulting Defendant, and those Defaulting Defendant’s Frozen Assets shall be transferred to Plaintiff through Plaintiff’s counsel forthwith, and upon receipt by Plaintiff’s counsel of such Defaulting Defendant’s Frozen Assets in full satisfaction of the Defaulting Defendants’ Individual Damages Award, the Financial Institution(s) holding that Defaulting Defendant’s Frozen Assets and Defaulting Defendants’ Frozen Accounts may unfreeze that Defaulting Defendant’s Frozen Assets and Defaulting Defendant’s Frozen Accounts. To the extent that a Defaulting Defendant’s Frozen Assets are less than the Defaulting Defendants’ Individual Damages Award, that Defaulting Defendant’s Frozen Assets are hereby released and transferred to Plaintiffs as partial satisfaction of the Defaulting Defendants’ Individual Damages Award for that Defaulting Defendant and those Defaulting Defendant’s Frozen Assets shall be transferred to Plaintiff through Plaintiff’s counsel forthwith, and

B. IT IS FURTHER ORDERED that in accordance with Rule 64 of the Federal Rules of Civil Procedure and this Court’s inherent equitable powers to issue remedies ancillary to its authority to provide final relief, and given the difficulties Plaintiff would have enforcing this Default Judgment Order, the Court also hereby grants Plaintiff’s request for a post-judgment restraining order continuing the attachment of each Defaulting Defendant’s Frozen Assets until Plaintiff has recovered the full payment of the Defaulting Defendants’ Individual

Damages Award owed to it by that Defaulting Defendant under this Default Judgment Order, or until further order of this Court; and

C. IT IS FURTHER ORDERED that in accordance with this Court's inherent equitable powers to issue remedies ancillary to its authority to provide final relief, and given the difficulties Plaintiff would have enforcing this Default Judgment, until Plaintiff has recovered the full payment of the Defaulting Defendants' Individual Damages Award owed to it by any Defaulting Defendant under this Default Judgment Order, in the event that Plaintiff discovers new and/or additional Defaulting Defendants' Assets (whether said assets are located in the U.S. or abroad) and/or Defaulting Defendants' Financial Accounts (whether said account is located in the U.S. or abroad) ("Defaulting Defendants' Additional Assets" and "Defaulting Defendants' Additional Financial Accounts," respectively), Plaintiff shall have the ongoing authority to serve this Default Judgment Order on any Financial Institutions controlling or otherwise holding such Defaulting Defendants' Additional Assets and/or Defaulting Defendants' Additional Financial Accounts ("Financial Institutions Holding Defaulting Defendants' Additional Assets and/or Financial Accounts");

1. Upon notice of this Default Judgment Order, Financial Institutions Holding Defaulting Defendants' Additional Assets and/or Financial Accounts shall immediately locate Defaulting Defendants' Additional Financial Accounts, attach and restrain such Defaulting Defendants' Additional Assets in Defaulting Defendants' Additional Financial Accounts from being secreted, concealed, transferred or disposed of or withdrawn; and
2. After five (5) business days following the service of this Default Judgment on Financial Institutions Holding Defaulting Defendants' Additional Assets and/or

Financial Accounts, Financial Institutions Holding Defaulting Defendants' Additional Assets and/or Financial Accounts shall transfer all Defaulting Defendants' Additional Assets to Plaintiffs as partial or full satisfaction of the Defaulting Defendants' Individual Damages Award, unless Defaulting Defendant has filed with this Court and served upon Plaintiffs' counsel a request that such Defaulting Defendants' Additional Assets be exempted from this Default Judgment Order. At the time the funds are released, Financial Institutions Holding Defaulting Defendants' Additional Assets and/or Financial Accounts shall transfer all Defaulting Defendants' Additional Assets shall provide to Plaintiff a breakdown reflecting the (i) total funds restrained in this matter per Defendant; (ii) the total chargebacks, refunds, and/or transaction reversals deducted from each Defendant's funds, restrained prior to release; and (iii) the total funds released per Defendant to the Plaintiff.

V. Miscellaneous Relief

- A. Upon Plaintiff's request, Amazon shall disable and/or cease facilitating access to the Seller IDs, including any other alias seller identification names being used offer for sale and/or sell Counterfeit or Infringing Products.
- B. Any failure by Defaulting Defendants to comply with the terms of this Default Judgment Order shall be deemed contempt of Court, subjecting Defaulting Defendants to contempt remedies to be determined by the Court, including fines and seizure of property;
- C. Interest from the date this action was filed shall accrue at the legal rate pursuant to 28 U.S.C § 1961.
- D. The bond posted by Plaintiff in the amount of \$5,000.00 is hereby ordered released by the Clerk.

E. This Court shall retain jurisdiction over this matter and the parties in order to construe and enforce this Judgment and permanent injunction.

SO ORDERED.

SIGNED this ____ day of _____, 2019
Pittsburgh, Pennsylvania

Nora Barry Fischer
United States District Judge

cc: Stanley D. Ference III, Esq.
courts@ferencelaw.com
Brian Samuel Malkin, Esq.
bmalkin@ferencelaw.com

ATTACHMENT "A"

Def. No.	Defendant / Seller ID
1	bufujiugan
2	DiMshop
3	E-ADF
4	OETT-YO
5	Phase 1 Marketing
6	Smart Store !
7	advancedshop
8	BJack-LiuA
9	BossUS
10	Intercall
11	InterDeals
12	Jiaowoliudehua
13	Kelly Babbitt
14	Labu Store
15	Maideer
16	NO9ESHOP
17	Nanther
18	Ojljjhfdi
19	Pingdi
20	Right Tools
21	SpideR
22	UniGalaxy
23	Wakstone Commerce
24	yuanzhugao

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AIRIGAN SOLUTIONS, LLC,

Plaintiff,

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BUFUJIUGAN, *et al.*,

Defendants.

Civil Action No. 18-1330

(Judge Fischer)

MEMORANDUM IN SUPPORT OF MOTION FOR DEFAULT JUDGMENT

Pursuant to Fed. R. Civ. P. 55(b)(2), Plaintiff Airigan Solutions, LLC (“Plaintiff”), by counsel, submits this Memorandum in Support of its Motion for Default Judgment seeking entry of Judgment against all Defendants in this Action on all Counts of the Amended Complaint, as no Defendant has answered or otherwise responded to the Amended Complaint and has offered no bona fide defense.

I. INTRODUCTION

Plaintiff has filed a Motion with this Court under Fed. R. Civ. P. 55(b)(2) for a default judgment against Defendants for trademark counterfeiting and infringement (Count I); false designation of origin, passing off and unfair competition pursuant to § 43(a) of the Lanham Act (Count II); patent infringement (Count III); common law unfair competition (Count IV); and common law trademark infringement (Count V) after Defendants unlawfully established Amazon.com internet stores to offer and sell infringing and counterfeit versions of Plaintiff’s NEGG® egg peelers, without authorization from, and to the detriment of, Plaintiff.

The Defendants have been properly served pursuant to Fed. R. Civ. P. 4 and are aware of this action, but nevertheless chose not to respond. As directed by the Court in its October 16, 2018, Amended Order on Plaintiff's Ex Parte Motion for an Order Authorizing Alternative Service on Defendants [DE 24], Plaintiff served Defendants by both email address obtained from Amazon.com and publication on the www.ferencelaw.com website. No Defendant has filed a response, and the Clerk has entered default. The Plaintiff also served discovery upon Defendants, including Requests for Admission, and no response to the discovery was received.

By their default, Defendants have conceded the truth of the allegation of the Amended Complaint. By their failure to respond to Requests for Admission, Defendants have admitted the matters therein. There are no issues of fact remaining in this suit, and a default judgment should be entered against Defendants providing for permanent injunctive relief, an award of statutory damages under the Lanham Act in the amount of \$2,000,000 per Defendant, a post-judgment asset restraining order, and an order authorizing the release and transfer of Defendants' assets from Amazon.com to satisfy the damages, in whole or in part, awarded to Plaintiff.

II. STATEMENT OF FACTS

A. Plaintiff's Innovative NEGG[®] Egg Peeler

Plaintiff Airigan was founded in 2015 and is in the business of producing, marketing and selling the patented NEGG[®] brand egg peeler, which was launched in 2015. *See Declaration of Margaret B. Tyler ("Tyler Dec."), ¶ 5 [DE 6]*. The NEGG[®] egg peeler (Fig. 1, below) is designed so that by placing a standard chicken egg inside with a capful of water, tightly fastening the opposing lids, and shaking the egg peeler, the shell is punctured and cracked so that it simply peels off in one continuous motion ("Plaintiff's NEGG[®] Product") (Fig. 2, below). *See Tyler Dec., ¶6 [DE 6]*:



Fig. 1



Fig. 2

The distinctive photograph of the NEGG[®] egg peeler found on all of the packaging and on-line sales materials was posed with parsley leaves underneath the right facing side of the egg peeler.

Airigan is the owner of U.S. Patent No. 9,968,211 for “PERSONAL EGG PEELER,” which is directed to the NEGG[®] brand egg peeler. *See Tyler Dec.*, ¶7 [DE 6]. A true and correct copy of the patent is attached to the Amended Complaint as “Exhibit 3” [DE 28]. Airigan is the owner of U.S. Trademark Registration No. 5,142,630 for NEGG for “manually operated device used for peeling eggs.” *See Tyler Dec.*, ¶7 [DE 6]. A true and correct copy of the trademark registration certificate is attached to the Amended Complaint as “Exhibit 1” [DE 28]. The NEGG[®] trademark, the logo (pictured below), and packaging have acquired distinctiveness among consumers:



A true and correct copy of the packaging, on which the above logo appears, is attached to the Amended Complaint as “Exhibit 2,” [DE 28] and includes a copy of the NEGG[®] product insert. *See Tyler Dec.*, ¶9 [DE 6]. Hereinafter, the NEGG[®] trademark, the NEGG[®] logo, and the trade dress for the NEGG[®] are collectively referred to as the “Negg Marks” or “Plaintiff’s Marks”. The NEGG[®] brand egg peeler and the Negg Marks have become well-known amongst

consumers and retailers and have and continue to receive widespread publicity. The NEGG[®] brand egg peeler has been featured on national television in The Today Show and the Home Shopping Network. *See Tyler Dec.*, ¶ 10 [DE 20].

Due to the success of Airigan and its NEGG[®] brand egg peeler, they have become the target of multiple counterfeiters seeking to profit off the goodwill, reputation and fame enjoyed by Airigan and its NEGG[®] brand egg peeler. *See Tyler Dec.*, ¶ 18 [DE 6]. The counterfeiting activities have driven sales and prices down. Indeed, wholesale orders from Airigan's re-sellers precipitously dropped due the pervasive activities of the counterfeiters. *See Tyler Dec.*, ¶ 19 [DE 6].

B. The Defendants

The Defendants are individuals and business entities who, upon information and belief, reside in China, and elsewhere outside the United States. *Amended Complaint*, ¶ 25 [DE28]. Defendants conduct business throughout the United States, including within the Commonwealth of Pennsylvania and this Judicial District, through the operation of online marketplaces, such as Amazon.com. *Id.* Each Defendant targets the United States, including Pennsylvania, and offered to sell and has sold and continues to sell infringing and counterfeit NEGG[®] egg peelers (the "Counterfeit Product") to consumers within the United States, including the Commonwealth of Pennsylvania and this Judicial District. *Id.*

Defendants knowingly and willfully manufacture, import, distribute, offer for sale, and sell products that infringe Plaintiff's patent and use counterfeit versions of Plaintiff's trademark. *Amended Complaint*, ¶¶ 2(b), 46, 54 - 59, 65-66, 71, and 77 [DE 28]. Defendants have cooperated, communicated their plans with one another, shared

information, and coordinated their efforts, all in order to create an illegal marketplace operating in parallel to the legitimate marketplace of Plaintiff's and the legally authorized resellers of Plaintiff's genuine goods. *Id.*, ¶ 2(g). Tactics used by Defendants to conceal their identities make it virtually impossible for Plaintiff to learn Defendants' true identities and the exact interworking of their counterfeit network. *Id.* at ¶ 31-33. Absent robust enforcement of the law and Plaintiff's rights, Defendants will be rewarded for their cynical circumvention of the law.

C. Procedural History

Plaintiff filed this action on October 5, 2018 against the Defendants identified in Schedule "A" of the Complaint, together with Plaintiff's *ex parte* application for: 1) a temporary restraining order; 2) an order restraining assets and Merchant Storefronts (as defined *infra*); 3) an order to show cause why a preliminary injunction should not issue; and 4) and an order authorizing expedited discovery against above-referenced Defendants (hereinafter collectively referred to as "Defendants" or individually as "Defendant"), Amazon Services, LLC d/b/a Amazon.com, and Amazon Payments, Inc. d/b/a Amazon Pay (collectively "Amazon") in light of Defendants' intentional and willful offering for sale and/or sales of Counterfeit and/or Patent Infringing Products ("Application"). Plaintiff also filed an *Ex Parte* Motion for an Order Authorizing Alternate Service on Defendants. A *Temporary Restraining Order* [DE 15] and *Order* granting the Motion for Alternate Service on Defendants [DE 16] issued on October 9, 2018.

On October 16, 2018, Plaintiff filed its *Amended Complaint* [DE 28] adding additional defendants and also moved to amend the *Temporary Restraining Order* and the *Order* on alternate service to include the newly added defendants. Amended orders [DE

24, 26] issued the same day, and the Defendants were served on October 25, 2018. A *Preliminary Injunction* [DE 41] issued on November 26, 2018. The Clerk entered default against Defendants on January 25, 2019 [DE 48].

III. ARGUMENT

A. This Court has Jurisdiction to Enter Default Judgment Against Defendants

This Court has jurisdiction to grant Plaintiff's motion and enter default judgment against Defendants because the Court has subject matter jurisdiction over this action as well as personal jurisdiction over the Defendants. This Court has subject matter jurisdiction over this action pursuant the Lanham Act and the Patent Act. 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338. This Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 over Plaintiff's state law claims because those claims are so related to the federal claims that they form part of the same case or controversy. *See Amended Complaint*, ¶ 1 [DE 28].

This Court has personal jurisdiction over the Defendants because of their substantial contacts with the Western District of Pennsylvania as well as directly targeting this Judicial District in their counterfeit operations. Further, the Defendants sold products in this District, establishing personal jurisdiction over them. *See Id.*, ¶ 2; *Declaration of Jennifer Lineberry* ("Lineberry Dec.") [DE 8].

Venue is proper in the Court pursuant to 28 U.S.C. § 1391 and 28 U.S.C. § 1400(b), and this Court may properly exercise personal jurisdiction over Defendants since each of the Defendants directly targets business activities toward consumers in the United States, including Pennsylvania and this Judicial District, through at least the

Online Marketplace Accounts/Internet Stores identified in Amended Schedule “A” to the *Amended Complaint*. Specifically, Defendants are seeking to do business with this Judicial District’s residents by operating one or more commercial Defendant Internet Stores through which Pennsylvania residents can purchase products using infringing and counterfeit versions of Plaintiff’s NEGG[®] egg peeler. Each of Defendants has targeted sales to Pennsylvania residents by operating online stores that offer shipping to the United States, including Pennsylvania and this Judicial District, and accept payment in U.S. dollars. Plaintiff confirmed that Defendants ship their Counterfeit Products to this Judicial District by purchasing goods from each of the Defendants’ Internet Stores, which the Defendants shipped into this Judicial District. *Id.*

Personal jurisdiction may be established either by specific or general jurisdiction, but specific jurisdiction is appropriate in the instant case because of Defendants’ contact with the forum. *See* 42 P. A. Cons. Stat. § 5322. The factors to consider when establishing specific jurisdiction are: “(1) the extent to which defendant ‘purposefully avail[ed]’ itself of the privilege of conducting activities in the State; (2) whether the plaintiffs’ claims arise out of those activities directed at the State; and (3) whether the exercise of personal jurisdiction would be constitutionally ‘reasonable.’” *See IMO Industries, Inc. v. Kiekert AG*, 155 F.3d 254, 259 (3rd Cir.1998). Defendants satisfy each of the factors to establish specific personal jurisdiction.

First, Defendants purposefully availed themselves of the privilege of conducting business in Pennsylvania and this Judicial District. Defendants purposefully targeted sales of Counterfeit Products to the Western District of Pennsylvania, offered to sell Counterfeit Products to Pennsylvania residents, and did in fact sell Counterfeit Products

to entities in Pennsylvania. *See Amended Complaint*, ¶ 29 [DE 28]. These actions are sufficient to establish jurisdiction over Defendants. 42 Pa. Cons. Stat. § 5322 (a).

Second, Plaintiff's claims arise directly from actions that occurred in this Judicial District. Plaintiff purchased Counterfeit Products to determine their authenticity and had the counterfeit goods shipped to Pennsylvania. *See Lineberry Dec.* These unauthorized and unlicensed sales of Counterfeit Products in this Judicial district establish this Court's jurisdiction over Defendants.

Lastly, this Court's exercise of specific personal jurisdiction over Defendants is "reasonable" under the constitution. Courts look at the burden on the defendant, the forum State's interest in adjudicating the dispute, the plaintiff's interest in obtaining convenient and effective relief, "the interstate judicial system's interest in obtaining the most efficient resolution of controversies, and the shared interest of the several States in furthering fundamental substantive social policies." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980).

The record in this case does not suggest that the burden of litigation in this District is extraordinary. Defendants offered to ship and sell their products to any part of the United States. *See Amended Complaint*, ¶ 28 [DE 28]. Pennsylvania and this Court have a valid interest in the resolution of the grievances of its citizens and businesses, particularly when they potentially involve issues of [Pennsylvania] law. *See Square D Co. v. Scott Elec. Co.*, No. 06-459, 2008 WL 4462298, at *12 (W.D. PA September 30, 2008). And Plaintiff has a valid and substantial interest in having its legal rights recognized and vindicated. *Id.* Therefore, this Court's exercise of specific personal jurisdiction over Defendants is constitutionally reasonable.

B. Joinder of the Defendants is Appropriate

Joinder of the Defendants is proper when Plaintiff seeks relief “jointly, severally, or in the alternative with respect to arising out of the same transaction, occurrence or series of transactions or occurrences;” and “any question of law or fact common to all defendants will arise in the action.” Fed. R. Civ. P. 20(a)(2). A “series” of transactions or occurrences means some connection or nucleus of operative facts or law. *See Hanley v. First Inv’rs Corp.*, 151 F.R.D. 76 (E.D. Tex. 1993); *see also Dig. Sin, Inc. v. Does 1-176*, 279 F.R.D. 239 (S.D.N.Y. 2012).

The Defendants are properly joined in this case. Plaintiff alleged in the *Amended Complaint* that Defendants were working in a conspiracy together: “Defendants have cooperated, communicated their plans with one another, shared information, and coordinated their efforts, all in order to create an illegal marketplace operating in parallel to the legitimate marketplace of Plaintiff’s and the legally authorized resellers of Plaintiff’s genuine goods.” *Amended Complaint*, ¶ 2(g) [DE 28]. And in the case of a default judgment, the well-pleaded allegations of a complaint are taken as true. *See Dundee Cement Co. v. Howard Pipe & Concrete Prods., Inc.*, 722 F.2d 1319, 1323 (7th Cir. 1983).

Had Defendants answered the *Amended Complaint*, Plaintiff would have been entitled to discovery to prove the allegations recited in the *Amended Complaint*, including that Defendants were properly joined here. But even without such discovery, there are numerous indications, also alleged in the *Amended Complaint*, that defendants are working together. All of the Defendants operate Internet stores that offer for sale and sell Counterfeit Products. *See Amended Complaint*, ¶ 27 [DE 28]. Defendants generally

utilize the same or similar images of the infringing products in their listing offering for sale the Counterfeit Products. *Id.* [DE 28]. The Defendants also advertise nearly identical infringing products on their store's websites, using identical language. *Id.* These facts, when considered as a whole, show that Defendants have engaged in a series of transactions with a connection of common operative facts that, Plaintiff submits, meet the joinder requirement of Rule 20.

Joinder of the Defendants is also proper because there are common questions of law with regard to Plaintiff's Amended Complaint as it relates to each Defendant. Plaintiff filed this case alleging the same causes of action against all of the Defendants. Plaintiff contends that the same operative law, the Lanham Act, the Patent Act, and Pennsylvania common law, applies to all of the Defendants. *See Amended Complaint*, ¶¶ 44 - 79 [DE 28]. The allegations against each Defendant are the same and require the same legal analysis. *See Id.* Each claim, now admitted by virtue of the Defendants' default, may be analyzed against all of the Defendants as a single unit. That is, no individual defendant is harmed by analyzing the Defendants as a whole.

C. Plaintiff is Entitled to a Default Judgment Against Defendants

1. The Clerk Properly Entered Default as to Defendants

The Clerk of this Court enters a default “[w]hen a party against whom judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise.” Fed. R. Civ. P. 55(a). The Clerk entered default against Defendants because, as the docket reflects, the time for filing a responsive pleading expired.

The facts, supported by uncontroverted declarations and the Amended Complaint filed in this case, demonstrate that Defendants had both constructive and actual notice of this suit, yet failed to enter an appearance or otherwise defend this action. Therefore, the Clerk appropriately entered default against Defendants pursuant to Fed. R. Civ. P. 55.

2. Factual Allegations Establish Defaulting Defendants' Liability

By failing to appear, contact Plaintiff, or otherwise defend against the Amended Complaint, Defendants are deemed to have admitted every allegation therein, and the Court must only determine whether Plaintiff's Amended Complaint properly states a claim for relief. *See Hritz v. Woma Corp.*, 732 F.2d 1178, 1180 (3d Cir. 1984); *see also Pair Networks, Inc. v. Lim Cheng Soon*, 2013 WL 452565, *1 (W.D. Pa., February 6, 2013). Plaintiff now moves this Court for a default judgment finding that Defendants are liable on all counts of Plaintiff's Amended Complaint.

Title 15 U.S.C. § 114 provides liability for trademark infringement if, without the consent of the registrant, a defendant uses "in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark which is likely to cause confusion, or to cause mistake, or to deceive." In order to prevail on its trademark infringement claim, Airigan Solutions must establish 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 plaintiff's consent" and (6) "that defendant's use of the mark is likely to cause confusion as to the affiliation, connection, or association of defendant with plaintiff, or as to the origin, sponsorship, or approval of the defendant's goods, services, or commercial activities by plaintiff." *1-800 Contacts, Inc. v. WhenU.com*, 414 F.3d 400, 406-407 (2d Cir. 2005) (internal quotations omitted).

To prevail on a claim of false designation of origin under Section 43(a) of the Lanham Act, Airigan Solutions must prove that the Defaulting Defendants used in commerce, in connection with any goods or services, any word, term, name, symbol or device, or any combination thereof, or any false designation of origin, which is likely to deceive as to the affiliation, connection, or association of the Defaulting Defendants with Airigan solutions, or as to the origin, sponsorship, or approval, of the Defaulting Defendants' goods by Airigan Solutions. 15 U.S.C. § 1125(a)(1). As with trademark infringement claims, the test for liability for false designation of origin under Section 43(a) is also "whether the public is likely to be deceived or confused by the similarity of the marks at issue." *Two Pesos, Inc. v. Taco Cabana, Inc.*, 505 U.S. 763, 780, 112 S. Ct. 2753, 2763 (1992).

Liability for patent infringement is established when a defendant "makes, uses, offers to sell, or sells any patent invention, or sells any patented invention within the United States or imports into the United States any patented invention during the term of the patent." 35 U.S.C. § 271.

Whether a defendant's use of plaintiff's trademarks created a likelihood of confusion between the plaintiff's and the defendant's products is also the determining factor in the analysis of unfair competition under the common law of Pennsylvania. *Mateson Chemical Corp. v. Vernon*, 2000 WL 680020, at *5 n. 7 (E.D.Pa. May 9, 2000). Further, the test to determine trademark infringement liability under Pennsylvania common law is the same as the likelihood of consumer confusion test outlined in Section 32(a) of the Lanham Act. *See, e.g., Tillery v. Leonard & Sciolla LLP*, 521 F. Supp. 2d 346, 348 n.1 (E.D. Pa. 2007), *Clean Ocean Action v. York*, 57 F.3d 328, 331 (3d Cir. 1995). *See also Fisons Horticulture, Inc. v. Vigoro Indus., Inc.*, 30 F.3d 466, 472 (3d Cir.1994). The well-pled factual allegations of Airigan Solution's *Amended*

Complaint [DE 28], including specifically those in Paragraphs 44 - 79, properly allege the elements for each of the above claims. Furthermore, Airigan Solutions also provided a detailed analysis demonstrating that the Counterfeit Products literally infringe all elements in claim 1 of U.S. Patent No. 9,968,211. [DE 9-1] Moreover, the factual allegations in Airigan Solution's *Amended Complaint* [DE 28], substantiated by the evidence submitted, conclusively establish the Defaulting Defendants' liability under each of the claims asserted in the *Amended Complaint*.

In addition to the well pled factual allegation, admitted by default, and established by the evidence, Defendants have also made certain admissions by failing to respond to the *Request for Admission* served upon them. *See Declaration of Brian Samuel Malkin in Support of Motion for Entry of Default Judgment and Permanent Injunction Judgment ("Malkin Dec in Support of DJ.")*, ¶ 5. These deemed admissions include the following:

At all times relevant hereto, Defendant knew that Plaintiff owned both U.S. Trademark Reg. No. 5,142,630 for the word mark "NEGG and U.S. Patent No. 9,968,211 entitled "PERSONAL EGG PEELER", and Defendant knew that Plaintiff had the exclusive right to use and license its intellectual property and the goodwill associated therewith.

Despite having the knowledge that you had no license or legal authority to do so, you engaged in the activity of promoting and otherwise advertising, selling, offering for sale, and/or distributing counterfeit goods under your Seller ID or Seller IDs.

At all times relevant hereto, you have been engaged in the fraudulent promotion, advertisement, distribution, offering for sale, and/or sale of goods that are counterfeit and substandard copies of Plaintiff's genuine NEGG[®] egg peeler.

You intentionally make, use, offer to sell, or import into the United States counterfeit and substandard copies of Plaintiff's genuine NEGG[®] egg peeler with English language packaging and instructions.

Accordingly, Default Judgment pursuant to Rule 55 of the Federal Rules of Civil Procedure should be entered against the Defaulting Defendants.

3. **Plaintiff is Entitled to Statutory Damages Under the Lanham Act**

The Lanham Act provides that the Plaintiff may elect at any time to recover statutory damages “if the court finds that the use of the counterfeit mark was willful, not more than \$2,000,000 per counterfeit mark per type of goods or services sold, offered for sale, or distributed, as the court considers just.”¹ 15 U.S.C. § 1117(c)(2). Defendants purposefully infringe Plaintiff’s mark for profit. *See Amended Complaint*, ¶¶ 55 - 58. The undisputed facts of this case show that Defendants’ actions must be willful use of a counterfeit mark under the meaning of the Lanham Act.² Indeed, by their failure to respond, Defendants have admitted their infringement is willful. *Tiffany (NJ) Inc. v. Luban*, 282 F. Supp. 2d 123, 124 (S.D.N.Y. 2003) (infringement is deemed willful “[b]y virtue of the default”). Because Defendants willfully use Plaintiff’s mark to sell counterfeit goods, Plaintiff is entitled to statutory damages of \$2,000,000 per defendant.

Congress enacted the statutory damages remedy in trademark counterfeiting cases because evidence of a counterfeiter’s profits in such cases is almost impossible to ascertain since “records are frequently nonexistent, inadequate, or deceptively kept.” *See Gucci Am., Inc., v. Duty Free Apparel, Ltd.*, 315 F. Supp. 2d 511, 520 (S.D.N.Y. 2004); *see also Coach, Inc. v. Weng*, 2014 U.S. Dist. LEXIS 79005, at *41-42 (S.D.N.Y. June 7, 2014) (“Section 1117(c) of the Lanham Act was created to give victims of trademark infringement and unfair competition an avenue for recovering damages when a defendant hides, alters, or destroys business records.”).

¹ Without waiving its claims under the Patent Act (Count III), Plaintiff elects to seek statutory damages under the Lanham Act (Count I). Damages for Counts II (Section 43(a) of the Lanham Act), IV (common law trademark infringement), and V (common law unfair competition) are encompassed in any statutory damages awarded under 15 U.S.C. § 1117(c) for Count I (counterfeiting and trademark infringement).

² Under the Lanham Act, it is not necessary a defendant knew a mark was registered for statutory damages to be awarded. *See* 15 U.S.C. ¶ 1116(d)(1)(B)(i).

Given Defaulting Defendants' propensities to conceal their identities, disappear and destroy or hide any evidence or records of their counterfeiting and infringing actions, and that to date, no Defaulting Defendants have appeared, answered or otherwise responded to the Amended Complaint, Plaintiffs cannot ascertain Defaulting Defendants' actual profits. Simply put, this case presents the exact circumstances that Congress envisioned in its enactment of Section 1117(c).

In addition to admitting their infringement is willful, each Defendant has also admitted that it made "more than \$1,000,000.00 (United States Dollars) in profit on the sales of the counterfeit goods." *Malkin Dec.* ¶ 5. In circumstances where no evidence of a defendant's profit was available, courts have consistently awarded at least \$1 million dollars in statutory damages.³ Furthermore, courts have awarded high damage amounts where a defendant's counterfeiting activities attracted wide market exposure through Internet traffic or advertisement. *See Coach, Inc. v. Ocean Point Gifts*, 2010 U.S. Dist. LEXIS 59003, *15-16 (D.N.J. Jun. 14, 2010) (high damage awards in counterfeit cases were "due in part to the wide market exposure that the Internet can provide"); *Burberry Ltd. v. Designers Imports, Inc.*, 2010 U.S. Dist LEXIS

³ *See, e.g., Eye Safety Sys., Inc. v. The Partnerships and Unicorporated Ass'ns. Identified in Schedule "A"*, Case No. 18-cv-00034 [D.E. 42] (N.D. Ill. Mar. 1, 2018) (awarding \$1 million in statutory damages per defendant, entering permanent injunction, and ordering PayPal to transfer defendants' funds to plaintiffs as partial satisfaction of judgment); *Spin Master Ltd. v. The Unincorporated P'ships and Ass'ns. Identified in Schedule "A"*, Case No. 18-cv-01270 [D.E. 39] (N.D. Ill. Apr. 25, 2018) (same); *Levi Strauss & Co. v. The Unicorporated P'ships and Ass'ns. Identified in Schedule "A"*, Case No. 17-cv-04561 [D.E. 33] (N.D. Ill. Aug. 1, 2017) (same); *Yeti Coolers, LLC v. Taneil George*, Case No. 17-cv-62215 [D.E. 46] (S.D. Fl. Mar. 29, 2018) (same); *Mycoskie, LLC v. csmlong188*, Case No. 17-cv-60782 [D.E. 43] (S.D. Fl. Jul. 21, 2017) (same); *Fendi Adele, S.R.L. v. alma Hernandez*, Case No. 17-cv-62379 [D.E. 37] (S.D. Fl. Jan. 28, 2018) (same); *Burberry Ltd. v. The Partnerships and Unicorporated Ass'ns. Identified in Schedule "A"*, Case No. 17-cv-03255 [D.E. 37] (N.D. Ill. June 7, 2017) (same); *Louis Vuitton Malletier, S.A. v. Andrew Henry*, Case No. 17-cv-61034 [D.E. 40] (S.D. Fl. Aug. 22, 2017) (same); *Cartier Int'l A.G. v. Anotoky*, Case No. 17-cv-60831 [D.E. 38] (S.D. Fl. Jul. 6, 2017) (same); *Lacoste Alligator S.A. v. 6666 store*, Case No. 17-cv-60046 [D.E. 49] (S.D. Fl. Jun. 28, 2017) (same); *Gucci Am., Inc. v. 8710 t-shirt shop*, Case No. 16-cv-63002 [D.E. 58] (S.D. Fl. Mar. 27, 2017) (same); and *Louis Vuitton Malletier, S.A. v. afste nxmu*, Case No. 17-cv-61819 [D.E. 39] (S.D. Fl. Dec. 12, 2017) (same).

3605, *28-29 (S.D.N.Y. Jan. 19, 2010) (damages amount based, in part, on “Defendant’s ability to reach a vast customer base through internet advertising”).

In the present case, an award of the maximum statutory damages of \$2 million dollars (double Defendant’s admitted minimum profit) is appropriate to serve the purposes of: (1) deterring the defendant and others situated like it from bringing into commerce counterfeit goods, (2) compensating the plaintiff for damages caused by defendant’s infringement, and (3) punishing the defendant appropriately for its counterfeiting activities. *See Michael Kors, L.L.C. v. The Partnerships and Unincorporated Associations Identified on Schedule “A”*, Case No. 15-cv-00124 (N.D. Ill. Mar. 25, 2015 and May 12, 2015) (\$2 million dollars in statutory damages awarded against each defendant) [DE 44 and 61]; *Monster Energy Co. v. The Partnerships and Unincorporated Associations Identified on Schedule “A”*, Case No. 15-cv-00277 (N.D. Ill. March 25, 2015) (\$2 million dollars in statutory damages awarded against each defendant) [DE 50].

4. Plaintiff is Entitled to Permanent Injunctive Relief

In addition to the foregoing relief, Plaintiff seeks entry of a permanent injunction enjoining Defendants from infringing or otherwise violating Plaintiff’s rights in its NEGG[®] egg peeler, including at least all injunctive relief previously awarded to by this Court to Plaintiff in the temporary restraining order and preliminary injunction. *See Evony, LLC v. Holland*, No. 2:11-CV-00064, 2011 WL 1230405, at *7 (W.D. Pa. Mar. 31, 2011) (“In this case, Plaintiffs have achieved “actual success on the merits” through the admission of liability arising from Defendant's default. Furthermore, the Verified Complaint establishes that Defendant unlawfully sells and distributes copyrighted and trademarked material of the Plaintiffs. Nothing in the facts before the Court indicates that

Defendant has ceased this infringing activity; thus, a permanent injunction is warranted in this case on all claims of the Verified Complaint.”). Plaintiff is also entitled to injunctive relief so it can prompt action against any new online marketplace accounts or websites that are identified, found to be linking to Defendants, and selling Counterfeit Product. A plaintiff is entitled to a permanent injunction under the Lanham Act, Patent Act, and Pennsylvania common law. 15 U.S.C. § 1116; 35 U.S.C. § 283; and *B&B Microscopes v. Armogida*, 532 F. Supp. 2d 744, 760 (W.D. Pa. 2007) (citing *Brody’s, Inc. v. Brody Bros., Inc.*, 454 A.2d 605, 607 (Pa. Super. Ct.1982)).

A permanent injunction, like the statutory damages under the Lanham Act, would help deter other individuals or corporations from infringing Plaintiff’s valuable trademark and patent rights. Additionally, entry of a permanent injunction against Defendants in this case will help expedite any future litigations between the defaulting Defendants and Plaintiff, if a case between the parties arises in the future. This equitable result would be in the interest of justice and provide Plaintiff with more flexibility to protect its intellectual property rights. As such, permanent injunctions are routinely entered by other Courts in similar counterfeiting cases. *See* n.3, *supra*, and cases therein.

5. Plaintiff Requests That This Court Order the Transfer to It of Remaining Assets in Defaulting Defendants’ Amazon Accounts

Plaintiff requested a temporary restraining order and preliminary injunction, *inter alia*, to prevent Defendants from transferring the funds held in their Amazon accounts beyond this Court’s jurisdiction. [DE 26] This Court granted the temporary restraining order and preliminary injunction, preventing Defendants from accessng the funds in their Amazon accounts. [DE 26, 41] This Court found that Plaintiff had established a

likelihood of success on the merits and irreparable harm in the absence of a temporary restraining order and preliminary injunction. *See Id.*

Plaintiff now requests that this Court Order Amazon.com and its affiliates (including Amazon Financial Services, Inc.) to transfer to Plaintiff the assets currently held in the defaulting Defendants' Amazon accounts in partial payment of any award of damages. In the absence of such an Order, it is likely that Plaintiff will be left without any effective means by which to collect from Defendants any monetary judgment entered by this Court. As explained, previously, Defendants and any assets they won, other than those held in their respective Amazon accounts, are presumably located in China. There is no bilateral treaty or multilateral convention in force between the United States and any other country on reciprocal recognition and enforcement of judgments. Moreover, as explained in some detail previously, Defendants are involved in illegal counterfeiting operations and go to great lengths to conceal their identities and whereabouts. As a result, even in the unlikely event that Plaintiff could enforce a U.S. judgment in the Chinese courts, it will be virtually impossible to locate Defendants or any assets they may hold in order to satisfy any monetary damages awarded in this case.

Such orders are routinely entered by other Courts to satisfy monetary judgment awards in similar counterfeiting cases. *See, e.g., Eye Safety Sys., Inc. v. The Partnerships and Unincorporated Ass'ns. Identified in Schedule "A"*, Case No. 18-cv-00034 [D.E. 41] (N.D. Ill. Mar. 1, 2018) (ordering PayPal to transfer defendants' funds to plaintiffs as partial satisfaction of judgment); *Spin Master Ltd. v. The Unincorporated P'ships and Ass'ns. Identified in Schedule "A"*, Case No. 18-cv-01270 [D.E. 39] (N.D. Ill. Apr. 25, 2018) (same); *Levi Strauss & Co. v. The Unincorporated P'ships and Ass'ns. Identified in*

Schedule "A", Case No. 17-cv-04561 [D.E. 33] (N.D. Ill. Aug. 1, 2017) (same); *Yeti Coolers, LLC v. Taneil George*, Case No. 17-cv-62215 [D.E. 46] (S.D. Fl. Mar. 29, 2018) (same); *Mycoskie, LLC v. csmlong188*, Case No. 17-cv-60782 [D.E. 43] (S.D. Fl. Jul. 21, 2017) (same); *Fendi Adele, S.R.L. v. alma Hernandez*, Case No. 17-cv-62379 [D.E. 37] (S.D. Fl. Jan. 28, 2018) (same); *Burberry Ltd. v. The Partnerships and Unincorporated Ass'ns. Identified in Schedule "A"*, Case No. 17-cv-03255 [D.E. 37] (N.D. Ill. June 7, 2017) (same); *Louis Vuitton Malletier, S.A. v. Andrew Henry*, Case No. 17-cv-61034 [D.E. 40] (S.D. Fl. Aug. 22, 2017) (same); *Cartier Int'l A.G. v. Anotoky*, Case No. 17-cv-60831 [D.E. 38] (S.D. Fl. Jul. 6, 2017) (same); *Lacoste Alligator S.A. v. 6666 store*, Case No. 17-cv-60046 [D.E. 49] (S.D. Fl. Jun. 28, 2017) (same); *Gucci Am., Inc. v. 8710 t-shirt shop*, Case No. 16-cv-63002 [D.E. 58] (S.D. Fl. Mar. 27, 2017) (same); and *Louis Vuitton Malletier, S.A. v. afste nxmu*, Case No. 17-cv-61819 [D.E. 39] (S.D. Fl. Dec. 12, 2017) (same).

IV. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant its Motion for Default Judgment; enter judgment against Defendants for trademark counterfeiting and infringement (Count I); false designation of origin, passing off & unfair competition pursuant to § 43(a) of the Lanham Act (Count II); patent infringement (Count III); common law unfair competition (Count IV); and common law trademark infringement (Count V); permanently enjoin Defendants; award Plaintiff statutory damages consistent with 15 U.S.C. § 1117(c); award Plaintiff pre-judgment interest and post-judgment interest on the above damages awards; and grant such further relief as this Court deems appropriate. Plaintiff additionally requests that this Court order Amazon to

transfer Defendants' assets held by Amazon to Plaintiff in partial payment of any default judgment entered against Defendants.

Respectfully submitted,

Dated: January 28, 2019

/s/ Stanley D. Ference III

Stanley D. Ference III

Pa. ID No. 59899

courts@ferencelaw.com

Brian Samuel Malkin

Pa. ID No. 70448

bmalkin@ferencelaw.com

FERENCE & ASSOCIATES LLC

409 Broad Street

Pittsburgh, Pennsylvania 15143

(412) 741-8400 - Telephone

(412) 741-9292 - Facsimile

CERTIFICATE OF SERVICE

I hereby certify that on January 28, 2019, the foregoing document is being filed via the Case Management/Electronic Case Filing (CM/ECF) system; I also certify that on January 28, 2019, a true copy of the foregoing is being served via email to the e-mail addresses at which Defendants were served and via publication by posting a true and correct copy on the website www.ferencelaw.com in accordance with the October 16, 2018 Amended Order Authorizing Alternate Service

/s/ Stanley D. Ference III
Stanley D. Ference III