

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

RAPID SLICER, LLC,

Plaintiff,

v.

ART-HOUSE, *et al.*,

Defendants.

Civil Action No. 19-411

(Judge Horan)

[PROPOSED] FINAL DEFAULT JUDGMENT AND PERMANENT INJUNCTION

This matter comes before the Court upon Motion by Plaintiff for entry of a default judgment against the Defendants set forth in Attachment “A” (hereinafter referred to as “Defaulting Defendants”) for Defaulting Defendants’ trademark counterfeiting and infringement, 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 federally registered trademark and copyrighted works in their manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying offering for sale and/or selling and/or sale of Counterfeit Products.¹

The Court, having considered the Plaintiff’s Motion for Default Judgment and Permanent Injunction, the Declaration of Brian Samuel Malkin in support of thereof, the Certificate of Service of the Summons and Complaint, the Entry of Default by the Clerk of Courts, and upon

¹ Counterfeit Products are products bearing and/or used in connection with the Plaintiff’s Mark (defined *infra*) and/or Rapid Slicer Work (defined *infra*), and/or products in packaging and/or containing labels bearing Plaintiff’s Mark and/or the Rapid Slicer Work, and/or bearing or used in connection with marks and/or artwork that are confusingly or substantially similar to the Plaintiff’s Mark and/or the Rapid Slicer Work and/or products that are confusingly or substantially similar to Plaintiff’s RAPID SLICER product.

all other pleadings and papers on file in this Action, it is hereby ORDERED as follows (hereinafter, "Order"):

I. Defaulting Defendants' Liability

Judgment is granted in favor of Plaintiff on all claims asserted against Defendants in the 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 of \$2,000,000.00 against each of the Defaulting Defendants pursuant to Section 15 U.S.C. § 1117(c) of the Lanham Act, plus pre-judgment interest.

III. Permanent Injunction

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

- (1) manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale, selling and/or otherwise dealing in Counterfeit Products, or any other products bearing the Plaintiff's Mark² and/or marks that are confusingly similar

² U.S. Trademark Reg. No. 5,647,154 for **RapidSlicer** for "Vegetable slicers; Non-electric food slicers" in Class 8.

to, identical to and constitute a counterfeiting or infringement of the Plaintiff's Mark and/or incorporating the Rapid Slicer Work³ and/or artwork that is substantially similar to, identical to, and constitute an infringement of the Rapid Slicer Work;

- (2) directly or indirectly infringing in any manner any of the Plaintiff's trademarks, copyrights, or other rights including, without limitation, the Plaintiff's Mark or the Rapid Slicer Work;
- (3) using any reproduction, counterfeit, copy, or colorable imitation of Plaintiff's trademarks, copyrights, or other rights including, without limitation, the Plaintiff's Mark and the Rapid Slicer Work to identify any goods or services not authorized by Plaintiff;
- (4) using any of Plaintiff's trademarks, copyrights, or other rights including, without limitation, the Plaintiff's Mark and the Rapid Slicer Work, or any other marks, photographs, or artwork that are confusing or substantially similar to the Plaintiff's Mark and Rapid Slicer Work on or in connection with the manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale, selling and/or otherwise dealing in the Counterfeit Products;
- (5) using any false designation of origin or false description, or engaging in any action which is likely to cause confusion, cause mistake and/or to deceive members of the trade and/or the public as to the affiliation, connection or association of any product manufactured, imported, exported, advertised, marketed, promoted, distributed, displayed, offered for sale or sold by Defaulting Defendants with Plaintiff, and/or as to the origin, sponsorship or approval of any product manufactured, imported, exported, advertised, marketed,

³ U.S. Copyright Reg. No. VA-2-112-976 covering the "Rapid Slicer Packaging (2017)".

promoted, distributed, displayed, offered for sale or sold by Defaulting Defendants and Defaulting Defendants' commercial activities by Plaintiff;

- (6) secreting, concealing, destroying, altering, selling off, transferring or otherwise disposing of and/or dealing with: (i) Counterfeit Products or (ii) any computer files, data, business records, documents or any other records or evidence relating to their User Accounts,⁴ Merchant Storefronts⁵ or any money, securities or other property or assets of Defaulting Defendants (hereinafter collectively referred to as "Defaulting Defendants' Assets") and the manufacture, importation, exportation, advertising, marketing, promotion, distribution, display, offering for sale and/or sale of Counterfeit Products;
- (7) using Plaintiff's Mark and/or marks that are confusingly similar to Plaintiff's Mark and/or incorporate the Rapid Slicer Work, 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 Plaintiff's Mark and/or a confusingly similar mark and/or the Rapid Slicer Work 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; and

⁴ User Accounts are any and all websites and any and all accounts with online marketplace platforms such as eBay.com, as well as any and all as yet undiscovered accounts with additional online marketplace platforms held by or associated with Defaulting Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them.

⁵ Merchant Storefronts are any and all User Accounts through which Defaulting Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them operate storefronts to manufacture, import, export, advertise, market, promote, distribute, display, offer for sale, sell and/or otherwise deal in products, including Counterfeit Products, which are held by or associated with Defaulting Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them.

(8) 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.

B. IT IS FURTHER ORDERED that, pursuant to 15 U.S.C. § 1118, the Defaulting Defendants must deliver up for destruction to Plaintiff 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 the Defaulting Defendants that infringe any of Plaintiff's trademarks, copyrights or other rights including, without limitation, the Plaintiff's Mark and/or the Rapid Slicer Work, or bear any marks, photographs, and/or artwork that are confusingly similar or substantially similar to the Plaintiff's Mark and/or the Rapid Slicer Work.

C. IT IS FURTHER ORDERED that Third Party Service Providers⁶ and Financial Institutions⁷ are permanently enjoined and restrained from:

secreting, concealing, transferring, disposing of, withdrawing, encumbering or paying Defaulting Defendants' Assets from or to financial accounts associated with or utilized by any Defaulting Defendant or any Defaulting Defendant's User Accounts or Merchant

⁶ Third Party Service Providers are any third-party providing services in connection with any Defaulting Defendant and/or any Defaulting Defendant's Merchant Storefront, including, without limitation, Internet Service Providers, back-end service providers, web designers, sponsored search engine providers, sponsored ad-words providers, sponsored shopping providers, merchant account providers, third-party processors and other payment processing services, shippers, domain name registrars and domain name registries.

⁷ Financial Institutions are any banks, financial institutions, credit card companies and payment processing agencies, such as Alipay US Inc. d/b/a Alipay.com, Amazon Payments Inc. d/b/a Pay.amazon.com, PayPal, Inc. d/b/a Paypal.com, and other companies or agencies that engage in the processing or transfer of money and/or real or personal property of any Defaulting Defendant.

Storefronts (whether said account is located in the U.S. or abroad) (“Defaulting Defendants’ Financial Accounts”).

D. IT IS FURTHER ORDERED that the Third Party Service Providers and Financial Institutions shall be permanently restrained and enjoined from engaging in any of the following acts or omissions:

providing services to Defaulting Defendants, Defaulting Defendants’ User Accounts and Defaulting Defendants’ Merchant Storefronts, including, without limitation, continued operation of Defaulting Defendants’ User Accounts and Merchant Storefronts.

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 Order, Defaulting Defendants’ Assets from Defaulting Defendants’ Financial Accounts that were and/or are attached and frozen or restrained pursuant to the Temporary Restraining Order and/or Preliminary Injunction 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”), 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 within twenty (20) business days following service of this Default Judgment Order, 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.

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 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 Order, or until further order of this Court.

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 Order:

1. until Plaintiff has recovered the full payment of the Defaulting Defendants' Individual Damages Award owed to it by any Defaulting Defendant under this 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 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");⁸

2. upon notice of this 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
3. no later than after twenty (20) business days following the service of this Order 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 Plaintiff as partial or full satisfaction of the Defaulting Defendants' Individual Damages Award, unless Defaulting Defendant has filed with this Court and served upon Plaintiff's counsel a request that such Defaulting Defendants' Additional Assets be exempted from this Order; at the time the funds are transferred,

⁸ This Order contemplates that investigation and/or discovery during judgment collection may reveal that Defaulting Defendants may have used other user accounts, operated by other Third Party Service Providers and Financial Institutions other than those named and that any additional discovered Third Party Service Providers and Financial Institutions, once identified and provided with notice, shall be subject to the restraints, asset seizure and turn over in this Order.

Financial Institutions Holding Defaulting Defendants' Additional Assets and/or Financial Accounts shall provide to Plaintiff a breakdown reflecting: the (i) total funds restrained in this matter per Defaulting Defendant; (ii) the total chargebacks, refunds, and/or transaction reversals deducted from each Defaulting Defendant's funds, restrained prior to release; and (iii) the total funds transferred per Defaulting Defendant to the Plaintiff.

V. Miscellaneous Relief

- A. Upon Plaintiff's request, the Third Party Service Providers or Financial Institutions 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 Products.
- B. Any failure by a Defaulting Defendant to comply with the terms of this Order shall be deemed contempt of Court, subjecting the Defaulting Defendant to contempt remedies to be determined by the Court, including fines and seizure of property.
- C. Interest from the date of this Order 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. Plaintiff shall serve the Defaulting Defendants with a copy of this Order in accordance with the Alternative Service Order [DE 12].

F. 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

Marilyn J. Horan
United States District Judge

cc: Stanley D. Ference III, Esq.
courts@ferencelaw.com
Brian Samuel Malkin, Esq.
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SCHEDULE "A"
DEFAULTING DEFENDANTS BY STORENAME AND MERCHANT ID

Def No.	Defendant / AliExpress Store Name	AliExpress Store Number
1	Art-House Store	2341184
2	Culcu of Store	3661109
3	EnjoyMy Life Store	4422024
4	FREEDLY Life Store	2901108
6	Innovation Painting Store	3113008
7	KingPet Market Store	2881374
8	Lauraayerre Store	4035037
9	Magical House Store	3077002
10	Manbo life Store	3190036
11	Sweet Treats	1813314
12	Sweettreats Official Store	1182793
13	TinGrace's Garret House Store	2797002
14	Xeon Life Trading Store	2947066
15	Zone Gathering Store	3414006

Def No.	Defendant / Amazon Store Name	Amazon ASIN Number	Amazon Seller ID
16	Big-Time	B07L885G61	A3CHZUFMWYW6A1
17	Gold Happy	B07KW7XQYG	A2GPYXZWFHL3C6

Def No.	Defendant / eBay Seller Name	eBay Item No.	PayPal E-mail
21	Kanzezolstore	113419574318	tnedirect@gmail.com
22	Magnetic-a	302953543850	javicasanovaduval@gmail.com