

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

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|------------------------------|---|---------------|
| DOGGIE DENTAL, INC., et al., |) | |
| |) | |
| Plaintiffs, |) | |
| |) | 2:19-cv-00682 |
| v. |) | |
| |) | |
| ANYWILL, et al., |) | |
| |) | |
| Defendants. |) | |
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| |) | |
| DOGGIE DENTAL INC., et al., |) | |
| |) | |
| Plaintiffs, |) | |
| |) | 2:19-cv-00746 |
| v. |) | |
| |) | |
| MAX_BUY, et al., |) | |
| |) | |
| Defendants. |) | |
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| DOGGIE DENTAL INC., et al., |) | |
| |) | |
| Plaintiffs, |) | |
| |) | 2:19-cv-01282 |
| v. |) | |
| |) | |
| GO WELL, et al., |) | |
| |) | |
| Defendants. |) | |
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| DOGGIE DENTAL INC., et al., |) | |
| |) | |
| Plaintiffs, |) | |
| |) | 2:19-cv-01283 |
| v. |) | |
| |) | |
| WORTHBUYER, et al., |) | |
| |) | |
| Defendants. |) | |
| |) | |

ORDER SCHEDULING HEARING ON DEFAULT JUDGMENT

A Default Judgment Hearing before the Court is hereby SCHEDULED for August 11, 2020 at 10:00 A.M. EDT via Zoom Video Conference. The Hearing will address all live Motions for Default Judgment in these related, above-captioned cases. The Plaintiffs shall give notice and provide service of this Order to all remaining Defendants in conformity with this Court's previous Orders authorizing alternative service. The Plaintiffs shall file Certificates of Service upon completion of such service. Any person who wishes to participate in the hearing by Zoom must be a party to these actions. In order to participate, any non-individual party must be represented by an attorney who is admitted or capable of being admitted to practice before this Court, and any such attorney must enter an appearance on the appropriate docket. Only the party's attorney may join the Zoom conference on their behalf. Alternatively, any party to these actions who files, via the Court's CM/ECF system, formal notice on the appropriate docket, including an email at which they can be contacted, that they intend to represent themselves may participate in the Zoom hearing. The Zoom information required to participate will be disseminated by email to parties who comply with these procedures for their use only. Public access to observe proceedings will be provided by other means. Participants are expected to join the Zoom conference at least fifteen (15) minutes early to provide time for admitting approved participants. Not later than August 8, 2020, any party intending to present testimony at this proceeding shall file on the docket a notice setting forth the name/title/affiliation of any such witness, along with a summary of the testimony that will be presented, along with the anticipated time that the direct examination of each such witness would likely consume. The party calling any such witness(es) shall be responsible for making all necessary arrangements for such

witnesses to testify via video, including all technical capabilities. At the Hearing, the Court intends to cover several issues.

First, the Court has identified four instances in which the Plaintiffs appear to have overcounted the number of copyright infringements. As to Defendant No. 81 in Case ‘682, CANIKLINE MALL, Plaintiffs allege one count of copyright infringement. However, the allegedly infringed image proffered at ECF No. 83-2 is not visible on that Defendant’s seller page, which is attached as an exhibit to the Plaintiffs’ initial Motion for TRO/PI at ECF No. 15-56. Likewise, in Case ‘746, the Court found overcounting as to Defendant Nos. 31, 53, and 66 (global-onlineshop, parsayt0, and redflower88, respectively). As to Defendant No. 31, Plaintiffs allege three counts of infringement, but there appears to be only one copyrighted image on that Defendant’s seller page at ECF No. 8-7, and that same image was used twice. As to Defendant No. 53, Plaintiffs allege two counts of infringement, but only one of the proffered copyrighted images is visible on that Defendant’s seller page at ECF No. 8-8. As to Defendant No. 66, Plaintiffs allege three counts of infringement. Yet it appears that two of the three alleged infringements exhibited at ECF No. 92-2 derive from the same copyrighted image, and in any case only two uses of the Plaintiffs’ images are visible on the seller’s page at ECF No. 8-8. So, the Plaintiffs are on notice as to these Defendants that those counts of infringement that appear superfluous will be dismissed, unless the Plaintiffs show at this Hearing that a formatting error in the filings or some other issue would remedy the Court’s assessment.

Second, as to Case ‘682, where the damages sought are disgorgement of profits under the Lanham Act, the Court notes that the record does not reflect that a key Request for Admission (“RFA”) was sent to Defendants. Namely, while Case ‘746 reflects that the Defendants admitted \$2 million in profit by dint of an unanswered RFA to that effect, the same is not reflected in Case

‘682. In that case, the Declaration avers that Defendants admitted to selling more than 150,000 units of infringing product through unanswered RFAs, but makes no reference to any RFA regarding \$2 million in profit. *Compare* 19-cv-746, Malkin Decl., ECF No. 92-1, ¶ 8 *with* 19-cv-682, Malkin Decl., ECF No. 83-1, ¶ 8. And yet the supplemental briefs in both cases are identical, stating that Plaintiffs seek \$2 million in disgorgement of profits per Defendant. The Plaintiffs will be expected to clarify whether this incongruity is an oversight or a distinction between the two cases. If the latter, such a distinction appears to be material and, in the Court’s estimation, should have been highlighted in the briefs.

Third, the Court reiterates its intent to clarify certain aspects of the Plaintiffs’ proposed orders in these cases. As outlined in the Court’s previous Text Order of May 26, 2020, such aspects include various forms of injunctive relief written into the proposed orders, but not addressed in the Motions.

Fourth, and most significantly, the Court will inquire into the Plaintiffs’ request for the maximum statutory damages and disgorgement of profits in the amounts claimed. Of course, there is a substantial vacuum of information, given that the Defendants failed to appear and discovery on the matter of damages is impossible. The online nature of the infringement could also mean that Defendants were able to reach a vast number of customers. Further, the Court must assess damages in an amount that furthers the deterrence goals of the Lanham and Copyright Acts, and that prevents Defendants and other willful infringers from viewing cases like these as merely the “cost of doing business.” The Court also does not doubt the Plaintiffs’ argument that willful trademark and copyright infringement can pose an “existential” threat to small businesses. That said, while the Plaintiffs are not foreclosed from making any arguments at all, the Court continues to harbor substantial doubt as to the damages sought here based on the

filings to-date. Plaintiffs must show *how* damages of \$2 million (for trademark) and \$150,000 (for copyright) are reasonable and *why* the Court cannot fashion a reasonable and likely substantial damages award that satisfies the considerations discussed above but that is ultimately not at the outermost limit of available damages.

Fifth, the Court will hear further from the involved parties on any other matter germane to the disposition of the pending Motions.

s/ Mark R. Hornak
Mark R. Hornak
Chief United States District Judge

Dated: July 29, 2020

cc: All counsel of record