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JS-6

7 Attorneys for Plaintiff
 8 E.I. Du Pont de Nemours and Company

9)	
10)	CASE NO. CV 12-10574 DDP (AJWx)
11)	ORDER GRANTING PLAINTIFF’S
12)	APPLICATION FOR DEFAULT
13)	JUDGMENT AND A PERMANENT
14)	INJUNCTION AGAINST DEFENDANT
15)	STEVEN A. DRABEK, AN INDIVIDUAL,
16)	DOING BUSINESS AS SCIENTIFIC
17)	EQUIPMENT OF HOUSTON
18)	THE HON. DEAN D. PREGERSON
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20 Before the Court is Plaintiff E.I. DU PONT DE NEMOURS AND COMPANY’S
 21 (“DuPont”) Application for Default Judgment and Permanent Injunction. The Court finds
 22 that DuPont has demonstrated that default judgment is appropriate in this case and
 23 GRANTS the Application for Default Judgment and Permanent Injunction.
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1 I. **BACKGROUND**

2 A. **Facts**

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4 The following facts are set forth in the Complaint: DuPont is a Delaware
5 corporation with a principal place of business at 1007 Market Street, Wilmington,
6 Delaware 19898. [Complaint at ¶ 2.] DuPont is a science company engaged in the
7 development, manufacture, sale and distribution of a wide variety of products and
8 ingredients in the United States and throughout the world. [Id. at ¶ 3.] DuPont is
9 informed and believes, and based thereon alleges, that Defendant Steven A. Drabek is an
10 individual with an address of 24201 FM 2154 Rd, Navasota, Texas 77868. [Id. at ¶ 3.]
11 DuPont is informed and believes, and based thereon alleges, that Defendant
12 Steven A. Drabek is doing business as Scientific Equipment of Houston, which is engaged
13 in the promotion and sale of various products in the United States, including in this
14 District, at its business location and through its websites at <http://www.labmiser.com> and
15 <http://www.agile-fx.com>. [Id. at ¶ 3.]
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20 In the late 1930's, DuPont discovered a method to polymerize tetrafluoroethylene to
21 form a fluoropolymer compound known as polytetrafluoroethylene ("PTFE").
22 [Id. at ¶ 10.] PTFE is both slippery and chemically inert making it useful in a wide variety
23 of different products. [Id.] In approximately 1944, DuPont adopted and began to use the
24 name and mark TEFLON® ("TEFLON® Mark") for its PTFE products and began to sell
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1 TEFLON[®] brand PTFE directly to manufacturers and others for use in a wide variety of
2 products. [*Id.* at ¶ 11.] DuPont alleges that the TEFLON[®] Mark is fanciful. [*Id.*]

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4 DuPont TEFLON[®] fluoropolymer products have been a commercial success. [*Id.*]
5 Since 1944, DuPont has generated millions of dollars in revenue from the sale of
6 TEFLON[®] products and the licensing of the TEFLON[®] Mark. [*Id.*] DuPont and its
7 related companies have spent millions of dollars in the advertising and promotion of the
8 TEFLON[®] Mark and the products sold under the TEFLON[®] Mark. [*Id.* at ¶ 12.]

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10 As a result of the quality of the DuPont TEFLON[®] fluoropolymer products and the
11 extensive sales, licensing and marketing, advertising and promotion of these products
12 under the TEFLON[®] Mark by DuPont and its related companies, DuPont alleges the
13 TEFLON[®] Mark has become a famous trademark that is widely and favorably known by
14 consumers in the United States and elsewhere as designating high quality and dependable
15 products originating exclusively from DuPont and its related companies. [*Id.* at ¶ 13.]

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17 DuPont alleges it is the exclusive owner of a number of United States Trademark
18 Registrations for the TEFLON[®] Mark for a variety of products and ingredients dating back
19 to 1946. These include: (a) Reg. No. 0,418,698 for the mark TEFLON[®] for “synthetic
20 resinous fluorine-containing polymers in the form of molding and extruding compositions,
21 fabricated shapes - namely, sheets, tubes, tape and filaments, and emulsions;” (b) Reg. No.
22 0,559,331 for TEFLON[®] for “polytetrafluoroethylene coatings in the nature of paints and
23 varnishes;” (c) Reg. No. 0,623,605 for TEFLON[®] for “fibers and filaments in the nature of
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1 threads and yarns adapted to be used in making fabrics;” (d) Reg. No. 0,676,166 for
2 TEFLON[®] for “films or sheets made from polymers of fluorinated hydrocarbons for use in
3 packaging applications, in electrical and non-electrical insulation, as protective liners for
4 containers and equipment, in tapes, in machinery parts, in covering, coating, and packing
5 substances, in hose and piping, and for general use in the industrial arts;” (e) Reg. No.
6 0,827,105 for TEFLON[®] for “coatings in the nature of paint, based on fluorine-containing
7 resins;” (f) Reg. No. 0,835,374 for TEFLON-S[®] for “stratified non-stick and self-
8 lubricating finishes for use as industrial and consumer product coatings for bearings, idler
9 rolls, ceramic resistors, hand saws, lawn and garden tools, and the like;” (g) Reg. No.
10 1,111,147 for TEFLON[®] for “chemical compound in the nature of a textile finish with oil,
11 water, and stain repellent characteristics;” (h) Reg. No. 1,592,650 for TEFLON[®] for
12 “fluorine-containing polymers in resin and dispersion form for use as additives in inks,
13 plastics, lubricants, coating, and other host materials where attributes such as lubricity,
14 friction reduction, nonstick, and temperature and chemical resistance are desired;” (i) Reg.
15 No. 2,601,355 for TEFLON[®] for “windshield wiper blades;” and (j) Reg. No. 3,206,677
16 for TEFLON[®] for “cleaning preparations, shampoos, wax and polish for automobiles”.

17 [Id. at ¶ 15.]

18 DuPont is informed and believes, and based thereon alleges, that Defendant
19 manufactures and sells a variety of lab equipment products for life science, chemical and
20 diagnostics research markets. [Id. at ¶ 18.] DuPont is informed and believes, and based
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1 thereon alleges, that Defendant offers for sale and sells some products in connection with
2 the TEFLON® Mark that do not contain genuine DuPont TEFLON® fluoropolymer or
3 otherwise are not authorized to be sold under the TEFLON® Mark (“Scientific Equipment
4 of Houston Unauthorized Products”). [*Id.* at ¶ 19.] DuPont is informed and believes, and
5 based thereon alleges, that Defendant has manufactured, advertised, and sold the Scientific
6 Equipment of Houston Unauthorized Products on its Internet websites with the intent of
7 misappropriating, for its own benefit, the tremendous goodwill built up by DuPont in the
8 TEFLON® Mark. [*Id.* at ¶ 20.]

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12 DuPont alleges that Defendant’s unauthorized use of the TEFLON® Mark was
13 intended to cause, has caused, and is likely to continue to cause consumer confusion; that
14 it is damaging the reputation and goodwill of TEFLON® Mark; and that it is causing
15 irreparable harm to DuPont. [*Id.* at ¶ 25-26.] DuPont alleges that Defendant’s use of the
16 TEFLON® Mark constitutes willful, deliberate and intentional infringement of DuPont’s
17 federally registered trademarks for the TEFLON® Mark in violation of § 32(1) of the
18 Lanham Act (15 U.S.C. § 1114(1)). [*Id.* at ¶ 30.]

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21 As presently before the Court is Plaintiff’s Application of Entry of Default
22 Judgment, the Court must accept the above allegations as true.

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24 **B. Procedural Posture**

25 On December 10, 2012, DuPont filed its Complaint against Defendant for:
26 (1) Trademark Infringement; (2) Trademark Counterfeiting; (3) False Designation of
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1 Origin and Unfair Competition Under the United States Trademark Act; (4) False
2 Description of Fact and Representations and False Advertising Under the United States
3 Trademark Act; (5) Trademark Dilution Under the United States Trademark Act; (6)
4 Trademark Dilution Under California State Law; (7) Unfair Competition in Violation of
5 California Business & Professions Code § 17200; (8) Common Law Trademark
6 Infringement and Unfair Competition; (9) California Trademark Infringement, Dilution
7 and Deceptive Acts and Practices; and (10) Accounting.
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10 On December 12, 2012, DuPont perfected service of the Summons and Complaint
11 upon Defendant in Compliance with the Federal Rules of Civil Procedure, as evidence by
12 the Proof of Service that was filed with this Court on December 18, 2012, and attached as
13 Exhibit “A” to the Declaration of Andrea E. Bates (“Bates Decl.”).
14 [See Bates Decl. at ¶ 2.] As Defendant failed to file an Answer or otherwise respond to the
15 Complaint, Plaintiff filed its Request for Entry of Default with the Clerk on February 11,
16 2013. [See Bates Decl. at ¶ 3.] Subsequently, the Clerk entered a default against
17 Defendant on February 12, 2013. [See Bates Decl. at ¶ 4.]
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22 On February 11, 2012 Plaintiff filed an Application for Default Judgment and
23 Permanent Injunction against Defendant and a Memorandum of Points and Authorities in
24 Support of Application for Default Judgment and Permanent Injunction. Plaintiff also
25 submitted the Declaration of Andrea E. Bates, Esq. in Support of the Application, which
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1 states, *inter alia*, that Defendant continues its infringing conduct as of the date of the
2 Application. [See Bates Decl.] That application is presently before the Court.

3 4 **II. LEGAL STANDARD**

5 Rule 55(b)(2) of the Federal Rules of Civil Procedure requires the plaintiff to apply
6 to a court for a default judgment in all cases where the requirements for a clerk-entered
7 default judgment cannot be met. *See* Fed. R. Civ. P. 55(b)(2). An Applicant must apply to
8 a court for a default judgment where: (1) the claim is for an amount that is not certain or
9 capable of being made certain by computation; (2) the defendant, although in default, has
10 appeared in the action; (3) the defendant is a minor or incompetent; or (4) the defendant is
11 in military service or is the United States. *See* Fed. R. Civ. P. 55(b) (2).

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15 Local Rule 55–1 requires that a motion for default judgment be accompanied by a
16 declaration that includes:

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18 (a) When and against what party the default was entered; (b) [t]he
19 identification of the pleading to which default was entered; (c) [w]hether
20 the defaulting party is an infant or incompetent person ... (d) [t]hat the
21 Servicemembers Civil Relief Act (50 App. U.S.C. § 521) does not apply;
and (e) [t]hat notice has been served on the defaulting party, if required by
[Federal Rule of Civil Procedure] 55(b)(2).

22 C.D. Cal. R. 55–1.

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24 “Rule 55(b)(2) requires service on the defaulting party only if that party has appeared in
25 the action.” *Landstar Ranger, Inc. v. Parth Enters., Inc.*, 725 F. Supp.2d 916, 919, fn. 19
26 (C.D.Cal. 2010).

1 “The district court's decision whether to enter a default judgment is a discretionary
2 one.” *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980). The Ninth Circuit directs a
3 district court to consider the following factors: (1) the possibility of prejudice to the
4 plaintiff; (2) the merits of plaintiff's substantive claim; (3) the sufficiency of the complaint;
5 (4) the sum of money at stake in the action; (5) the possibility of a dispute concerning
6 material facts; (6) whether the default was due to excusable neglect; and (7) the strong
7 policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits.
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10 *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986).

11 **III. DISCUSSION**

12 **A. Plaintiff Has Satisfied Local Rule 55–1**

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14 Plaintiff's declaration satisfies Local Rule 55–1. [*See* Bates Decl.] On December
15 12, 2012, DuPont perfected service of the Summons and Complaint upon Defendant in
16 Compliance with the Federal Rules of Civil Procedure, as evidence by the Proof of Service
17 that was filed with this Court on December 18, 2012, and attached as Exhibit “A” to the
18 Bates Decl.
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21 As Defendant failed to file an Answer or otherwise respond to the Complaint,
22 Plaintiff filed its Request for Entry of Default with the Clerk on February 11, 2013.
23 [*See* Bates Decl. at 3.] Subsequently, the Clerk entered a default against Defendant on
24 February 12, 2013. [*See* Bates Decl. at 4.] Defendant is not an infant or incompetent
25 person or in military service or otherwise exempted under the Soldiers’ and Sailors’ Civil
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1 Relief Act of 1940. [See Bates Decl. at 6.] Plaintiff declares Defendant never appeared in
2 this action; therefore, a notice of application for default judgment is not required by
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4 Federal Rule of Civil Procedure 55(b)(2). Plaintiff, however, provided notice on February
5 15, 2013, of this Application on Defendant. [See Bates Decl. at ¶ 8.] Accordingly,
6 Plaintiff's declaration satisfies the requirement of Local Rule. 55-1.
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8 **B. Eitel Factors Weigh in Favor of Entry of Default Judgment**

9 Upon consideration of the *Eitel* factors, the Court concludes that the factors weigh
10 in favor of default judgment.
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12 **1. Possibility of Prejudice to the Plaintiff**

13 “The first *Eitel* factor considers whether a plaintiff will suffer prejudice if a default
14 judgment is not entered.” *Landstar Ranger*, 725 F. Supp.2d at 920. A plaintiff suffers
15 prejudice when denying default judgment would leave plaintiff without a remedy. *Id.*
16 Defendant has infringed upon Plaintiff's trademarks resulting in damage to Plaintiff's
17 business and reputation. [Complaint at ¶ 26.] Without default judgment, Plaintiff will be
18 left with no recourse to enforce its intellectual property rights. Therefore, as Plaintiff
19 would suffer prejudice if default judgment were denied, the Court concludes that this
20 factor favors default judgment.
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24 **2. & 3. Merits and Sufficiency of Plaintiff's Substantive Claims**

25 “The second and third *Eitel* factors assess the substantive merit of plaintiff's claim
26 and the sufficiency of its pleadings.” *Landstar Ranger*, 725 F. Supp.2d at 920. To
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1 warrant default judgment, the allegations in the Complaint must be sufficient to state a
2 claim upon which Plaintiff can recover. *Danning v. Lavine*, 572 F.2d 1386, 1388
3 (9th Cir. 1978). Plaintiff asserts a claim for federal trademark infringement.¹ To state a
4 trademark infringement claim, a Plaintiff must plead: “(1) that it has a protectable
5 ownership interest in the mark; and (2) that the defendant's use of the mark is likely to
6 cause consumer confusion, thereby infringing upon [plaintiff's] rights to the mark.” *Dep’t*
7 *of Parks & Recreation v. Bazaar Del Mundo, Inc.*, 448 F.3d 1118, 1124 (9th Cir. 2006).
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10 Plaintiff alleges that, in 1944, it adopted and began to use the fanciful name and
11 mark TEFLON® (“TEFLON® mark”) for its PTFE products and began to sell TEFLON®
12 brand PTFE directly to manufacturers and others for use in a wide variety of products.
13 [Compl. at ¶ 11.] Plaintiff alleges that it is the exclusive owner of a number of United
14 States Trademark Registrations for the TEFLON® mark for a variety of products and
15 ingredients dating back to 1946. [Compl. at ¶ 15.] Plaintiff alleges that the TEFLON®
16 mark has become a famous trademark that is widely and favorably known by consumers in
17 the United States and elsewhere as designating high quality and dependable products
18 originating exclusively from Plaintiff and its related companies. [*Id.* at ¶ 16.] Plaintiff has
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24 ¹ Plaintiff also asserted claims for Trademark Counterfeiting, False Designation of Origin and
25 Unfair Competition, False Description of Fact and Representations, Trademark Dilution under the
26 United States Trademark Act, Trademark Dilution Under California State Law, Unfair
27 Competition in Violation of California Business & Professions Code § 17200, Common Law
28 Trademark Infringement and Unfair Competition, California Trademark Infringement, Dilution
and Deceptive Acts and Practices , and Accounting. (Compl.) As Plaintiff's Application for
Default Judgment seeks damages only as to Plaintiff's trademark claim, the Court only considers
the trademark infringement claim. [Appl. for Default J. at 8.]

1 used the TEFLON® Mark for over seventy (70) years and invested millions of dollars in
2 advertising, promoting, and marketing its products under the TEFLON® Mark. [*Id.* ¶¶ 10,
3 16.]

4
5 Defendant has infringed upon Plaintiff's marks by manufacturing, advertising,
6 distributing, and selling merchandise bearing Plaintiff's marks, or marks that are
7 substantially indistinguishable from Plaintiff's marks. [*Id.* ¶¶ 19- 23.] Defendant's actions
8 are likely to cause consumer confusion and have caused damage to Plaintiff's business and
9 reputation. [*Id.* ¶¶ 25-26.] Accepting these factual allegations as true, as the court must in
10 deciding an application for default judgment, Plaintiff has sufficiently pleaded a claim for
11 trademark infringement, and
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14 **4. Sum of Money at Stake in the Action**

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16 “The fourth *Eitel* factor examines the amount of money at stake in relation to the
17 seriousness of a defendant's conduct.” *Craigslist, Inc. v. Naturemarket, Inc.*,
18 694 F. Supp.2d 1039, 1060 (N.D.Cal. 2010). Plaintiff seeks injunctive relief against
19 further infringement by Defendant and statutory damages of \$2,000,000.00 pursuant to
20 15 U.S.C. § 1117(c)(2).² [Appl. for Default J. at 9.] The amount of money sought by
21 Plaintiff is consistent with the allegations in the Complaint and the claim asserted.
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23 *See* 15 U.S.C. § 1117(c)(2) (providing statutory damages of “not more than \$2,000,000 per
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26 ² Plaintiff, in the Complaint, also sought actual, compensatory, and punitive damages; accounting
27 and disgorgement; and costs, interest, and attorney fees. [Compl. at pp. 12-13, ¶¶ 1–17.] In the
28 Application for Default Judgment, Plaintiff is seeking only a permanent injunction,
\$2,000,000.00 in statutory damages, and costs. [Appl. For Default J. at 10.]

1 counterfeit mark” if the court “finds that the use of the counterfeit mark was willful”);
2 *Craigslist*, 694 F. Supp.2d at 1060 (holding that this factor weighed in favor of default
3 judgment where plaintiff asserted copyright, trademark, breach of contract, and fraud
4 claims and sought damages in the range of \$1,177,827.07 to \$4,900,327.07). Accordingly,
5 this factor weighs in favor of default judgment.
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8 **5. Possibility of a Dispute Concerning Material Facts**

9 “The fifth *Eitel* factor examines the likelihood of dispute between the parties
10 regarding the material facts surrounding the case.” *Craigslist*, 694 F.Supp.2d at 1060.
11 Where a plaintiff has filed a well-pleaded complaint, the possibility of dispute concerning
12 material facts is remote. *See, e.g., Landstar Ranger*, 725 F.Supp.2d at 921-22 (“Since
13 [plaintiff] has supported its claims with ample evidence, and defendant has made no
14 attempt to challenge the accuracy of the allegations in the Complaint, no factual disputes
15 exist that preclude the entry of default judgment.”). As Plaintiff filed a well-pleaded
16 Complaint, this factor weighs in favor of default judgment.
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20 **6. Whether the Default Was Due to Excusable Neglect**

21 “The sixth *Eitel* factor considers whether defendant's default may have been the
22 product of excusable neglect.” *Landstar Ranger*, 725 F. Supp.2d at 922. This factor
23 favors default judgment when the defendant has been properly served or the plaintiff
24 demonstrates that the defendant is aware of the lawsuit. *Id.* (concluding that this factor
25 favored default judgment and “possibility of excusable neglect is remote” where defendant
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1 had been properly served); *Craigslist*, 694 F.Supp.2d at 1061 (“Plaintiff has proffered
2 evidence showing Defendants were clearly aware of the pending litigation.”). Here,
3 Defendant was properly served but apparently chose not to participate in this litigation;
4 thus, default did not occur because of excusable neglect. [See Proof of Service attached as
5 Exhibit A to Bates Decl.]
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7 **7. Strong Policy Favoring Decisions on the Merits**

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9 “The final *Eitel* factor examines whether the strong policy favoring deciding cases
10 on the merits prevents a court from entering default judgment.” *Craigslist*, 694 F.Supp.2d
11 at 1061. Although, “[c]ases should be decided upon their merits whenever reasonably
12 possible,” *Eitel*, 782 F.2d at 1472, “Rule 55(a) allows a court to decide a case before the
13 merits are heard if defendant fails to appear and defend.” *Landstar Ranger*, 725 F.Supp.2d
14 at 922. Notwithstanding the strong policy presumption in favor of a decision on the
15 merits, where a defendant fails to appear and respond as occurred here, a decision on the
16 merits is impossible and default judgment is appropriate. *See Craigslist*, 694 F.Supp.2d at
17 1061. Thus, this factor weighs in favor of default judgment.
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22 **C. Remedies**

23 Plaintiff seeks injunctive relief against further infringement by Defendant, statutory
24 damages of \$2,000,000.00, and costs. The Court considers each in turn and holds that
25 Plaintiff is entitled to injunctive relief, damages, and costs.
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1 **1. Injunctive Relief**

2 Plaintiff seeks injunctive relief to permanently enjoin Defendant from using
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4 Plaintiff's marks in connection with the sale and offer for sale of infringing products.
5 [Appl. for Default J. at 9.] Injunctions are authorized for trademark infringement pursuant
6 to 15 U.S.C. § 1116(a). *See Craigslist*, 694 F.Supp.2d at 1061-62 (granting injunction
7 based upon trademark infringement claims). A permanent injunction based upon a
8 trademark infringement action is appropriate where it is not “absolutely clear” that a
9 defendant's infringing activities have ceased and will not begin again. *Pepsi Co*, 238
10 F.Supp.2d at 1177–78 (granting permanent injunction despite limited evidence from
11 plaintiff regarding the risk of future infringement by the defendant).
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14 As discussed above, Plaintiff has established that it is entitled to judgment on its
15 trademark infringement claim. Given Defendant's failure to defend against this lawsuit
16 and Plaintiff's evidence that Defendant's infringement continued even after the filing of
17 this lawsuit (Bates Decl. ¶ 9), there is no indication that Defendant has or will terminate its
18 infringing activities. Accordingly, the Court permanently enjoins Defendant from using
19 Plaintiff's marks in connection with the sale and offer for sale of infringing products.
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22 **2. Damages**

23 Plaintiff seeks \$2,000,000.00 in statutory damages. [Appl. for Default J. at 9.]
24 Because Defendant has refused to participate in this case, Plaintiff argues that
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1 ascertainment of Defendant's profits is impossible and asks the Court to impose statutory
2 damages pursuant to 15 U.S.C. § 1117(c), which states:

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4 [T]he plaintiff may elect, at any time before final judgment is rendered by the
5 trial court, to recover, instead of actual damages and profits under subsection
6 (a) of this section, an award of statutory damages for any such use in
7 connection with the sale, offering for sale, or distribution of goods or services
8 in the amount of—

9 (1) not less than \$1,000 or more than \$200,000 per counterfeit mark per type
10 of goods or services sold, offered for sale, or distributed, as the court
11 considers just; or

12 (2) if the court finds that the use of the counterfeit mark was willful, not more
13 than \$2,000,000 per counterfeit mark per type of goods or services sold,
14 offered for sale, or distributed, as the court considers just.

15 15 U.S.C. § 1117(c).

16 Plaintiff argues that Defendant's actions were willful and therefore subject to
17 15 U.S.C. § 1117(c). “Willfulness can be established by evidence of knowing conduct or
18 by evidence that the defendant acted with an aura of indifference to plaintiff's rights—in
19 other words, that the defendant willfully blinded himself to facts that would put him on
20 notice that he was infringing another's trademarks, having cause to suspect it.” *Philip*
21 *Morris USA Inc. v. Liu*, 489 F. Supp.2d 1119, 1123 (C.D.Cal.2007) (internal quotation
22 marks and citation omitted).

23
24 Here, Plaintiff alleges that Defendant “acts constitute willful, deliberate and
25 intentional infringement of Plaintiff’s federally registered trademarks for the
26 TEFLON® mark in violation of § 32 (1) of the Lanham Act (15 U.S.C. § 1114(1)).”
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1 [See Complaint at ¶ 30.] An allegation of willful trademark infringement is deemed true
2 on default. *Derek Andrew, Inc. v. Poof Apparel Corp.*, 528 F.3d 696, 698 (9th Cir. 2008).
3
4 Furthermore, after Plaintiff filed this lawsuit, Defendant continued to infringe upon
5 Plaintiff's marks. [Bates Decl. ¶ 9.] Accordingly, the Court holds that Defendant's
6 infringement upon Plaintiff's marks was willful.
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8 District courts have discretion in determining the amount of statutory damages,
9 subject only to the statutory minimum and maximum. 15 U.S.C. § 1117(c)(1) (providing
10 for a minimum of \$1,000 and a maximum of \$200,000 “as the court considers just”); *see*
11 *Harris v. Emus Records Corp.*, 734 F.2d 1329, 1335 (9th Cir. 1984) (interpreting
12 17 U.S.C. § 504(c), a similarly-worded copyright infringement provision, and concluding
13 that district courts have “wide discretion in determining the amount of statutory damages
14 to be awarded, constrained only by the specified maxima and minima.”).
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17 A finding of willfulness subjects a defendant to an enhanced statutory maximum of
18 \$2,000,000.00. 15 U.S.C. § 1117(c)(2). In *Philip Morris*, a district court awarded the
19 statutory maximum of \$1,000,000 for each of two separate trademark infringements by the
20 defendant, for a total award of \$2,000,000.00 where the defendant transported and
21 unloaded counterfeit cigarettes and was willfully ignorant that the cigarettes infringed
22 upon plaintiff's trademark.³ *Philip Morris*, 489 F.Supp.2d at 1122-24.
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27 ³ The statutory maximum provided for in 15 U.S.C. § 1117(c)(2) was doubled in 2008 from
28 \$1,000,000.00 to \$2,000,000.00. Prioritizing Resources and Organization for Intellectual Property
Act of 2008, PL 110-403 (Oct. 13, 2008).

1 Although Defendant's infringement of Plaintiff's trademark appears to be willful,
2 the court declines to award \$2,000,000 in statutory damages. Plaintiff has presented no
3 evidence regarding the extent of sales and no evidence that Defendant sold infringing
4 products to a wide market. Infringing products on Defendant's website range in price
5 from \$1.50 to \$178.33. The court awards damages in the amount of \$25,000 per
6 infringing product. Plaintiff has provided evidence of 21 different products bearing
7 Plaintiff's TEFLON Mark. (Supplemental Decl. of Daniel J. Beitey in Support of
8 Plaintiff's Application for Default Judgment and a Permanent Injunction ¶ 5, Exh. C.)
9 Thus, in total, the court awards damages to Plaintiff in the amount of \$525,000.
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13 3. Costs

14 A plaintiff is entitled to recover "costs of the action" in trademark infringement
15 actions. 15 U.S.C. § 1117(a)(3). Based upon Defendant's conduct in this case and the
16 Court's conclusion that Defendants' actions were willful, the Court holds that Plaintiff is
17 entitled to recover its costs incurred in bringing this action. *See* 15 U.S.C. § 1117(a).
18 Plaintiff is to file a bill of costs following entry of default judgment.
19 *See* C.D. Cal. L.R. 54-3.
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23 IV. CONCLUSION

24 For the reasons set forth, the Court GRANTS Plaintiff's Application for Default
25 Judgment and Permanent Injunction against Defendant Steven A. Drabek, an individual,
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1 doing business as Scientific Equipment of Houston. Plaintiff shall submit its bill of costs
2 within fifteen days of entry of this order.
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4 **IT IS SO ORDERED**

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6 Dated: May 03, 2013
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9 DEAN D. PREGERSON
United States District Judge