

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 11-24094-Civ-COOKE/TURNOFF

ADIDAS AG, *et al.*,

Plaintiffs,

vs.

DANYU WU, *et al.*,

Defendants,

DEFAULT JUDGMENT

THIS MATTER is before me on Plaintiffs' Motion for Entry of Final Default Judgment Against Defendants. (ECF No. 45). On November 14, 2011, Plaintiff filed a Complaint for Damages and Injunctive Relief against Defendants, the partnerships and unincorporated associations identified on Schedule "A" hereto (collectively, "Defendants"). (ECF No. 1). On June 8, 2012, Plaintiffs filed their First Amended Complaint against Defendants. (ECF No. 32). On August 17, 2012, the Clerk entered a default (ECF No. 41), as to Defendants for failure to answer or otherwise respond to the Summons and First Amended Complaint. Defendants have not responded to this Motion.

A "defendant, by his default, admits the plaintiff's well-pleaded allegations of fact," as set forth in the operative complaint. *Eagle Hosp. Physicians, LLC v. SRG Consulting, Inc.*, 561 F.3d 1298, 1307 (11th Cir. 2009). Following the entry of a default judgment, damages may be awarded "without a hearing [if the] amount claimed is a liquidated sum or one capable of mathematical calculation," so long as all essential evidence is a matter of record. *S.E.C. v.*

Smyth, 420 F.3d 1225, 1231, 1232 n.13 (11th Cir. 2005) (quoting *Adolph Coors Co. v. Movement Against Racism & the Klan*, 777 F.2d 1538, 1544 (11th Cir. 1985)).

As to Count I (Trademark Counterfeiting and Infringement), 15 U.S.C. § 1117(c) provides that a plaintiff may elect an award of statutory damages in the sum of not less than \$1,000.00 and not more than \$200,000.00 per counterfeit mark per type of good. Plaintiffs have elected to recover an award of statutory damages. Plaintiff adidas has presented evidence that Defendants distributed, advertised, offered for sale, and/or sold at least fifteen (15) types of goods that were counterfeits of the adidas trademarks protected by six (6) federal trademark registrations for such goods. Plaintiff Reebok has presented evidence that Defendants distributed, advertised, offered for sale, and/or sold at least four (4) types of goods that were counterfeits of the Reebok trademarks protected by three (3) federal trademark registrations for such goods. Plaintiffs have also presented evidence that Defendants' conduct was willful.

“Statutory damages under § 1117(c) are intended not just for compensation for losses, but also to deter wrongful conduct.” *PetMed Express, Inc. v. MedPets.Com, Inc.*, 336 F. Supp. 2d 1213, 1220-21 (S.D. Fla. 2004). Plaintiffs have requested \$6,000.00 for each counterfeit mark per type of good. To reach this amount, Plaintiffs began with a baseline of \$1,000.00, trebled the amount to reflect Defendants' willful conduct pursuant to § 1117(b), and doubled the amount for the purpose of deterrence. The result is \$6,000.00 per six (6) counterfeited marks per fifteen (15) types of goods, which amounts to \$540,000.00 in statutory damages for Plaintiff adidas. The result is \$6,000 per three (3) counterfeited marks per four (4) types of goods, which amounts to \$72,000.00 in statutory damages for Plaintiff Reebok. The total of \$540,000.000 in statutory damages is a reasonable damages award pursuant to statute for Plaintiff adidas. The total of

\$72,000.00 in statutory damages is a reasonable damages award pursuant to statute for Plaintiff Reebok.

As to Count II (False Designation of Origin), Plaintiffs acknowledge that the judgment must be limited to the amount awarded pursuant to Count I, and the entry of a permanent injunction. Plaintiffs have presented sufficient evidence that they are entitled to a permanent injunction. *See Petmed Express, Inc.*, 336 F. Supp. 2d at 1222-23.

As to Count III (Cybersquatting), Plaintiffs have presented sufficient evidence that Defendants violated the Anticybersquatting Consumer Protection Act (“ACPA”), 15 U.S.C. § 1125(d). The ACPA provides that a Court may “order the forfeiture or cancellation of the domain name or the transfer of the domain name to the owner of the mark.” 15 U.S.C. § 1125(d)(1)(c). Plaintiffs are entitled to the transfer and ownership of Defendants’ domain names, which are confusingly similar to the adidas and Reebok trademarks. Additionally, Plaintiffs may recover actual damages or statutory damages of not less than \$1,000.00 and not more than \$100,000.00 per domain name. 15 U.S.C. § 1117(d). Plaintiffs have elected statutory damages. Plaintiff adidas requests \$10,000.00 for each of the twenty four (24) pirated domain names, for a total award of \$240,000.00. Plaintiff Reebok requests \$10,000.00 for each of the five (5) pirated domain names, for a total award of \$50,000. In light of Defendants’ intentional, wrongful behavior, the total of \$240,000.00 in statutory damages for Plaintiff adidas and \$50,000 in statutory damages for Plaintiff Reebok are reasonable damages awards pursuant to statute. *See, e.g., Petmed Express, Inc.*, 336 F. Supp. 2d at 1221-22; *Transamerica Corp. v. Moniker Online Servs., Inc.*, Case No. 09-cv-60973-CMA, 2010 WL 1416979, at *4 (S.D. Fla. Apr. 7, 2010). Further, courts in this district have entered similar orders to transfer domain names in cases with similar facts. *See, e.g., Louis Vuitton Malletier, S.A. v. Zhen Zhou*, Case No. 10-cv-

62202-MGC (S.D. Fla. Apr. 18, 2011); *Chanel, Inc. v. Guofeng Liu*, Case No. 10-cv-61972-UU (S.D. Fla. Feb. 7, 2011); *Chanel, Inc. v. Zhiqing*, Case No. 10-cv-60382-AJ (S.D. Fla. Aug. 6, 2010).

Finally, costs are recoverable pursuant to 15 U.S.C. § 1117(a). Plaintiffs submit that they are entitled to receive \$700.00 in fees, consisting of the filing fee and the process server fee. These costs are reasonable.

Accordingly, it is **ORDERED and ADJUDGED** that the Plaintiffs' Motion for Entry of Final Default Judgment Against Defendants (ECF No. 45) is **GRANTED**, as follows:

1. Final default judgment is entered in favor of Plaintiffs, adidas AG, adidas International Marketing B.V., and adidas America, Inc., (together, "adidas") and Reebok International Limited and Reebok International Ltd., (together, "Reebok") and against Defendants. Plaintiff adidas is awarded judgment in the amount of **\$780,350.00**, for which sum let execution issue. This amount consists of \$540,000.00 in statutory damages pursuant to 15 U.S.C. § 1117(c); \$240,000.00 in statutory damages pursuant to 15 U.S.C. § 1117(d); and \$350.00 in costs pursuant to 15 U.S.C. § 1117(a). Plaintiff Reebok is awarded judgment in the amount of **\$122,350.00**, for which sum let execution issue. This amount consists of \$72,000.00 in statutory damages pursuant to 15 U.S.C. § 1117(c); \$50,000.00 in statutory damages pursuant to 15 U.S.C. § 1117(d); and \$350.00 in costs pursuant to 15 U.S.C. § 1117(a).

2. All funds restrained in the Western Union Financial Services, Inc. ("Western Union") accounts related to the Western Union account recipient "Danyu Wu," or which funds are associated with the Money Transfer Control Number, 062-664-6191, and any other related accounts of the same customer(s), shall be transferred to Plaintiffs in partial satisfaction of the monetary judgment entered herein.

3. Plaintiffs shall recover post-judgment interest at the rate prescribed by 28 U.S.C. § 1961.

4. The Clerk is directed to release the bond posted by Plaintiffs in the amount of \$10,000.00.

5. Permanent Injunction Relief: Defendants and their officers, agents, servants, employees and attorneys, and all persons acting in concert and participation with Defendants are hereby permanently restrained and enjoined from:

- a. manufacturing or causing to be manufactured, importing, advertising, or promoting, distributing, selling or offering to sell counterfeit and infringing goods using the adidas Marks identified in Paragraph 12 of the First Amended Complaint (the “adidas Marks”) and the Reebok trademarks identified in Paragraph 20 of the First Amended Complaint (the “Reebok Marks”);
- b. using the adidas Marks and the Reebok Marks in connection with the sale of any unauthorized goods;
- c. using any logo, and/or layout which may be calculated to falsely advertise the services or products of Defendants offered for sale or sold via the domain names identified on Schedule “A” hereto (collectively the “Subject Domain Names”) and/or any other website or business, as being sponsored by, authorized by, endorsed by, or in any way associated with Plaintiffs;
- d. falsely representing themselves as being connected with Plaintiffs, through sponsorship or association;
- e. engaging in any act which is likely to falsely cause members of the trade and/or of the purchasing public to believe any goods or services of Defendants offered for sale or sold via the Subject Domain Names and/or any other website or business are in any way endorsed by, approved by, and/or associated with Plaintiffs;
- f. using any reproduction, counterfeit, copy, or colorable imitation of the adidas Marks and the Reebok Marks in connection with the publicity, promotion, sale, or advertising of any goods sold by Defendants via the Subject Domain Names and/or any other website or business, including, without limitation, sports and leisure wear, namely, suits, shirts, t-shirts, polo shirts, jerseys, jackets, track suits, and warm-up suits; headgear, namely hats; athletic footwear and leisure foot wear, namely boots, sandals, specific purpose athletic shoes and general purpose sports shoes; and all-purpose sport bags, athletic bags, and backpacks bearing the adidas Marks and footwear and

apparel namely shirts, t-shirts, and athletic uniforms bearing the Reebok Marks;

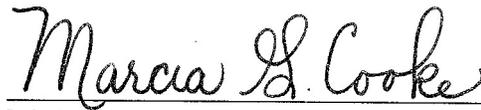
- g. affixing, applying, annexing or using in connection with the sale of any goods, a false description or representation, including words or other symbols tending to falsely describe or represent goods offered for sale or sold by Defendants via the Subject Domain Names and/or any other website or business, as being those of Plaintiffs or in any way endorsed by Plaintiffs;
- h. otherwise unfairly competing with Plaintiffs;
- i. effecting assignments or transfers, forming new entities or associations or utilizing any other device for the purpose of circumventing or otherwise avoiding the prohibitions set forth above; and
- j. using the adidas Marks and the Reebok Marks, or any confusingly similar trademarks, within domain name extensions, metatags or other markers within website source code, from use on any webpage (including as the title of any web page), any advertising links to other websites, from search engines' databases or cache memory, and any other form of use of such terms which is visible to a computer user or serves to direct computer searches to websites registered by, owned, or operated by Defendants, including the Internet websites operating under all of the Subject Domain Names.

6. Additional Equitable Relief:

- a. In order to give practical effect to the Permanent Injunction, the Subject Domain Names are hereby ordered to be immediately transferred by Defendants, their assignees and/or successors in interest or title, and the Registrars to Plaintiffs' control. To the extent the current Registrars do not facilitate the transfer of the domain names to Plaintiffs' control within five (5) days of receipt of this judgment, the Registries shall, within thirty (30) days, change the Registrar of Record for the Subject Domain Names to a United States based Registrar of Plaintiffs' choosing, and that Registrar shall transfer the Subject Domain Names to Plaintiffs;
- b. Upon Plaintiff's request, the top level domain (TLD) Registry for each of the Subject Domain Names, within thirty (30) days of receipt of this Order, shall place the Subject Domain Names on Registry Hold status for the life of the current registration, thus removing them from the TLD zone files maintained by the Registry which link the Subject Domain Names to the IP addresses where the associated websites are hosted; and
- c. Upon Plaintiff's request, the Internet Corporation for Assigned Names and Numbers ("ICANN") shall take all actions necessary to ensure that the top level domain Registry responsible for the Subject Domain Names transfers and/or disables the Subject Domain Names.

6. The Clerk is directed to **CLOSE** this case. All pending motions, if any, are **DENIED**
as moot.

DONE and ORDERED in chambers at Miami, Florida, this 28th day of September 2012.



MARCIA G. COOKE
United States District Judge

Copies furnished to:
William C. Turnoff, U.S. Magistrate Judge
Counsel of record

SCHEDULE A
DEFENDANTS BY NUMBER AND SUBJECT DOMAIN NAMES

Defendant 1 2010shopjerseys.net
Defendant 2 2010shopjerseys.org
Defendant 3 4adidas.com
Defendant 4 888shop-jerseys.com
888shopjerseys.com
ccmjerseys.com
ccmjerseys.org
Defendant 5 adiclothing.com
Defendant 7 adidasempire.com
Defendant 8 adidas-f50-adizero.com
Defendant 9 adidasf50adizero.com
mercurial2012.com
Defendant 10 adidasf50shoes.com
wholesalenikemercurial.com
Defendant 11 adidasjeremyscott.com
Defendant 12 adidasjp.com
Defendant 14 adidas-online-shop.com
Defendant 16 adidasporschedesignde.com
Defendant 17 adidassbounce.com
Defendant 18 adidasscarpecalcio.com
Defendant 19 adidassshoes001.com
Defendant 20 adidasshoessite.com
adidasshoeshop.com
Defendant 21 adidassmith.com
Defendant 22 adidassuperstarshoes.com
Defendant 24 adidastour360.com
Defendant 25 adidaswings.com
Defendant 27 airmaxshopchina.com
selladidas.com
Defendant 28 autobotshop.com
Defendant 29 buyjerseyonline.com
Defendant 30 buyjerseyswholesale.com
Defendant 31 buyteamsportsuniforms.com

Defendant 32 caminio.com
caminio.at

Defendant 33 ccmjersey.com

Defendant 35 cheap001.com

Defendant 36 cheap999.com

Defendant 37 cheapjerseysfromchina.com
jerseysfromchina.biz

Defendant 38 cheapkicksforsale.com

Defendant 40 cheapshopping4u.com
cheapnikeshoes2u.com

Defendant 41 cn-jerseys.com

Defendant 42 everysportuniforms.com

Defendant 43 fashion333.com

Defendant 46 footballjerseys4sale.com

Defendant 47 gsdiscount.com

Defendant 48 helloadidas.com

Defendant 49 ilove-shopping.org
b2cshop.us
love-shopping.org
loveshopping.us
iloveushopping.com

Defendant 50 indoor-soccershoes.com
indoor-soccershoes.com

Defendant 51 inthestyleshop.com

Defendant 52 jeremyscottsadidas.com

Defendant 53 jeremyscottwing.com

Defendant 54 jerseysforcheap.biz
jerseysfromchina.net

Defendant 55 jerseysfromchina.com
jerseysfromchina.org
jerseysfromchina.asia

Defendant 56 jerseysfromchina.info

Defendant 57 jerseysfull.com
superstonejerseys.com

Defendant 58 jerseys-googler.com

Defendant 59 lovinadidas.com

Defendant 60 lowestbestexport.com

Defendant 61 mercurialshoesoutlet.com
Defendant 62 nba-basketball-shoes.net
Defendant 63 nba-home.com
Defendant 64 nikemercurialshoes.com
nikemercurialvaporsuperfly3.com
Defendant 65 nike-mercurial-store.com
nikemercurialvaporsales.com
Defendant 66 nikeshoes001.com
Defendant 67 onlinesoccerboots.co.uk
Defendant 68 outlet-jerseys.com
Defendant 69 plentystock.com
Defendant 70 ptjerseys.com
Defendant 71 ptjerseys.net
Defendant 72 ptjerseys.org
Defendant 73 reebok123.com
Defendant 74 reebokeasytoneonline.com
Defendant 75 reebok-member.com
nfl-depot.com
reebokmember.com
reeboktrade.com
sportjerseystown.org
sportjerseys-town.net
Defendant 77 shopadicolor.com
Defendant 78 shopsoccerjerseys.com
Defendant 79 soccercleats4u.com
Defendant 80 soccercleatsnike.com
Defendant 81 soccercleatsshoes.com
Defendant 82 soccer-cleats-shoes.com
adidaspredatoroutlet.com
Defendant 83 soccerjerseycenter.com
Defendant 84 socceroutlets.com
socceroutletss.com
Defendant 85 soccershoes4you.com
Defendant 86 soccershoesforsales.com
Defendant 87 soccershoesproducts.com
nikemercurialoutlets.com
Defendant 88 soccershoesstores.com

Defendant 89 soccerusa4you.com
officialsoccershoes.com

Defendant 90 supercheapsoccer.com

Defendant 92 toahk.com

Defendant 93 topjerseysorder.com
sportsjerseys-town.net

Defendant 94 tradeccc.net
mosscc.net

Defendant 95 trikotdiscount.com
shopdata12.net
trikotdiscount.at
trikotdiscount.net
trikotdiscount.org

Defendant 96 usa-soccer-jersey.com

Defendant 98 various-jersey-wholesale.com

Defendant 99 well-sports.com
inthestyleshop.com

Defendant
100 wholesale-from-china.com

Defendant
101 wholesalejerseysfromchina.com
jerseysfromchina.co

Defendant
103 womenadidas.com

Defendant
104 world-jerseys.com

Defendant
105 world-soccer-shoes.com