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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

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HTS, Inc. an Arizona Corporation,)

No. CV-12-835-PHX-SMM (BSB)

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Plaintiff,)

11

vs.)

**MEMORANDUM OF DECISION
AND ORDER**

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David Boley, an individual, and NuVision,)
Systems, an entity of unknown origin,)

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Defendants.)

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Before the Court is Plaintiff’s motion for default judgment. (Doc. 17.) In its
16 Complaint, Plaintiff, HTS, Inc. (“HTS”), alleges claims against Defendants David Boley
17 (“Boley”) and NuVision Systems (“NuVision”) for false designation of origin and trademark
18 infringement under 15 U.S.C. § 1125(a), misappropriation of trade secrets under the Arizona
19 Uniform Trade Secrets Act, Ariz. Rev. Stat. § 44-401 to § 44-404, and common law tort
20 claims for breach of fiduciary duty and unfair competition. This matter was assigned and
21 litigated before Magistrate Judge Bridget S. Bade. (Doc. 11.) On November 6, 2012,
22 Magistrate Judge Bade held a default damages hearing in open court pursuant to Fed. R. Civ.
23 P. 55(b)(2). (Doc. 24.) On May 20, 2013, Judge Bade issued her Report and
24 Recommendation. (Doc. 31.) She recommends that default judgment be entered against
25 Defendant Boley in the form of damages, attorney’s fees and costs, and permanent injunctive
26 relief. (Id.)

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STANDARD OF REVIEW

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When reviewing a Magistrate Judge’s Report and Recommendation, this Court must

1 “make a de novo determination of those portions of the report . . . to which objection is
2 made,” and “may accept, reject, or modify, in whole or in part, the findings or
3 recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C); see also Baxter
4 v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991) (citing Britt v. Simi Valley Unified Sch.
5 Dist., 708 F.2d 452, 454 (9th Cir. 1983)). Failure to object to a Magistrate Judge’s
6 recommendation relieves the Court of conducting de novo review of the Magistrate Judge’s
7 factual findings; the Court then may decide the dispositive motion on the applicable law.
8 Orand v. United States, 602 F.2d 207, 208 (9th Cir. 1979) (citing Campbell v. United States
9 Dist. Court, 501 F.2d 196 (9th Cir. 1974)).

10 By failing to object to a Report and Recommendation, a party waives its right to
11 challenge the Magistrate Judge’s factual findings, but not necessarily the Magistrate Judge’s
12 legal conclusions. Baxter, 923 F.2d at 1394; see also Turner v. Duncan, 158 F.3d 449, 455
13 (9th Cir. 1998) (failure to object to a Magistrate Judge’s legal conclusion “is a factor to be
14 weighed in considering the propriety of finding waiver of an issue on appeal”); Martinez v.
15 Ylst, 951 F.2d 1153, 1156 (9th Cir. 1991) (citing McCall v. Andrus, 628 F.2d 1185, 1187
16 (9th Cir. 1980)).

17 DISCUSSION

18 Having reviewed the legal conclusions of the Report and Recommendation of the
19 Magistrate Judge, and no objections having been made by Defendants thereto, the Court
20 hereby incorporates and adopts the Magistrate Judge’s Report and Recommendation.

21 CONCLUSION

22 For the reasons set forth,

23 **IT IS HEREBY ORDERED** approving, incorporating, and adopting the Report and
24 Recommendation of Magistrate Judge Bridget S. Bade. (Doc. 31.)

25 **IT IS FURTHER ORDERED** that Plaintiff’s Motion for Default Judgment against
26 Defendant David Boley is **GRANTED**. (Doc. 17.)

27 **IT IS FURTHER ORDERED** that Plaintiff’s claims against Defendant NuVision
28 be **dismissed without prejudice** for failure to serve pursuant to Fed. R. Civ. P. 4(m).

1 **IT IS FURTHER ORDERED** that the Clerk shall enter Judgment in favor of
2 Plaintiff HTS, Inc. and against Defendant David Boley in the form of damages in the amount
3 of \$179,474.57, plus attorney’s fees and costs in the amount of \$27,694.55, for a total award
4 of \$207,169.12. The Judgment shall earn interest at the annual federal rate from the date of
5 entry of Judgment until paid in full.

6 **IT IS FURTHER ORDERED GRANTING** the following permanent injunctive
7 relief in favor of Plaintiff HTS, Inc., and against Defendant David Boley:

8 1. Boley, his agents, representatives, employees, assigns, and suppliers, and all
9 persons acting in concert or privity with Boley, are permanently enjoined from using any
10 HTS trademarks, specifically HTS’s “eye-design” logo (the Mark), as shown in the exhibits
11 to the Complaint, (Doc. 8, Exs. A and B), including formatives thereof, or any other name,
12 mark, designation or depiction in a manner that is likely to cause confusion regarding
13 whether Boley is affiliated or associated with, or sponsored by HTS, or that is likely to dilute
14 the distinctiveness of HTS’s trademark or any other marks owned by HTS. Specifically,
15 Boley is permanently enjoined from using the NuVision “eye-design” logo (the infringing
16 Mark) on the form shown in the exhibits to the Complaint (Doc. 8, Exs. C and D).

17 2. Boley, his agents, representatives, employees, assigns, and suppliers, and all
18 persons acting in concert or privity with Boley, are permanently enjoined from assisting,
19 aiding, or abetting any other person or business entity in engaging in or performing any of
20 the activities referred to in paragraph 1.

21 3. Boley is permanently enjoined from possessing, and shall immediately destroy
22 or surrender to HTS, all stationery, forms, printed matter, advertising, and paper goods
23 containing HTS’s Mark, formatives thereof, and the infringing Mark.

24 4. Boley is permanently enjoined from using, in connection with any business or
25 the promotion thereof, any reproduction, counterfeit, copy, or colorable imitation of HTS’s
26 Mark, formatives thereof or trade dress; and Boley shall not utilize any designation of origin
27 or description or representation that falsely suggests or represents any association or
28 connection with HTS.

