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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Konstantin Malofeev,

10 Plaintiff,

11 v.

12 Unknown Party, et al.,

13 Defendants.
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No. CV-14-02684-PHX-DLR

ORDER

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16 Before the Court is Plaintiff Konstantin Malofeev's Motion for Default Judgment.
17 (Doc. 52.) For the reasons stated below, the motion is denied.

18 **BACKGROUND**

19 On December 14, 2014, Malofeev, a Russian citizen, filed suit against
20 GoDaddy.com, LLC, and several unknown parties alleging defamation and false light.
21 (Doc. 1.) On March 13, 2015, Malofeev filed a second amended complaint, which
22 included a claim for violation of 15 U.S.C. § 1125, and named Alexei Sorokin, Sarkis
23 Grigoryan, and Mikhail Kovalenko as Defendants (the "Individual Defendants"). (Doc.
24 11.)

25 Malofeev alleges that the Individual Defendants run several websites:
26 www.malofeev.com, www.malofeev.biz, www.malofeev.info, www.malofeev.co, and
27 www.kandidatmalofeev.com. (*Id.*, ¶¶ 4-6.) Using these websites, which are hosted by
28 GoDaddy.com, the Individual Defendants allegedly published false information about

1 Malofeev; namely, that he is involved in criminal activities, such as fraud or money
2 laundering, and that he was criminally investigated in Russia. (*Id.*, ¶¶ 7, 13-15.)
3 Malofeev asserts these websites contain defamatory subject matter and cast him in a false
4 light, for which he seeks \$50,000,000 in damages and transfer of the websites to his
5 name.

6 The Individual Defendants were served with the complaint via email, (Doc. 26),
7 and the Clerk entered default against them on October 20, 2015, (Doc. 51). Malofeev
8 now moves for default judgment against the Individual Defendants and an order
9 transferring the rights to the websites to him. (Doc. 52.)

10 LEGAL STANDARD

11 “Entry of default judgment . . . is left to the trial court’s sound discretion.” *Aldabe*
12 *v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980). Once default has been entered by the
13 Clerk, the Court may enter default judgment pursuant to Rule 55(b). *See Eitel v. McCool*,
14 782 F.2d 1470, 1471 (9th Cir. 1986). Courts may consider several factors in determining
15 whether to enter default judgment, including (1) the possibility of prejudice to the
16 plaintiff, (2) merits of the claims, (3) sufficiency of the complaint, (4) amount of money
17 at stake, (5) possibility of factual disputes, (6) whether default is due to excusable
18 neglect, and (7) the strong policy underlying the Federal Rules of Civil procedure
19 favoring decisions on the merits. *Id.* at 1471-72. All allegations in the complaint are
20 taken as true, and the plaintiff “is required to prove all damages sought in the complaint.”
21 *Philip Morris USA, Inc. v. Castworld Prods., Inc.*, 219 F.R.D. 494, 498 (C.D. Cal. 2003).

22 ANALYSIS

23 Malofeev’s motion does not analyze the merits of his case and he makes no
24 attempt to examine the *Eitel* factors. Instead, the two-page motion merely recites the
25 procedural history of the case and requests that the Court enter default judgment
26 transferring the five websites to him. (Doc. 52 at 1-2.) Notwithstanding the deficient
27 motion, the Court declines to enter default judgment for several reasons.

28 First, the Court likely lacks personal jurisdiction over the Individual Defendants.

1 Malofeev alleges that he is a Russian citizen. The complaint does not list his address or
2 state whether he currently resides in the United States. He seeks default judgment against
3 three Individual Defendants, all of whom are alleged to have Russian addresses, and all
4 of whom were served via email. (Doc. 11, ¶¶ 4-6.) Although he argues that each
5 Individual Defendant consented to jurisdiction in this forum via GoDaddy.com’s terms of
6 service, he fails to provide any allegations relating to those terms. Most importantly, the
7 terms of service are binding between the Individual Defendants and GoDaddy.com; not
8 between the Individual Defendants and Malofeev.

9 Furthermore, Malofeev does not allege that any harm occurred to him in this
10 jurisdiction or that the Individual Defendants targeted the forum with their allegedly
11 defamatory websites. Malofeev does not allege that the Individual Defendants have any
12 contacts with the forum. Simply put, the Court’s exercise of personal jurisdiction over
13 the Individual Defendants in this case would violate due process. *See Brink v. First*
14 *Credit Res.*, 57 F. Supp. 2d 848, 858 (D. Ariz. 1999) (“[T]he Due Process Clause requires
15 that nonresident defendants have certain *minimum contacts* with the forum state such that
16 the exercise of personal jurisdiction does not offend traditional notions of fair play and
17 substantial justice.”) (emphasis in original).

18 Second, even assuming the truth of the factual allegations, the second amended
19 complaint fails to state a claim. Malofeev brings three claims: (1) defamation, (2) false
20 light, and (3) violation of 15 U.S.C. § 1125. In order to establish defamation, the plaintiff
21 must prove: (1) defendant made a false statement regarding plaintiff, (2) the statement
22 was defamatory, (3) the statement was published to a third party, (4) defendant made the
23 statement with actual malice, and (5) damages. *See Morris v. Warner*, 770 P.2d 359, 366
24 (Ariz. Ct. App. 1988). Actual malice is required because Malofeev alleges that he is a
25 public figure, (Doc. 11, ¶ 13), and requires “proof that the defamatory statement was
26 made with knowledge that it was false or with reckless disregard of whether it was false
27 or not.” *Curtis Publ’g Co. v. Butts*, 388 U.S. 130, 162 (1967) (internal quotation marks
28 omitted). Malofeev does not identify a single defamatory statement in his complaint.

1 Nor does he specify which statements appeared on which website. There are no factual
2 allegations demonstrating that the statements are false, or that Defendants harbored ill
3 will toward Malofeev. The claim is insufficiently pled.

4 With respect to false light, “a public figure may bring a false light claim for
5 statements that relate to his private life and presents his private life in a false light.”
6 *Ultimate Creations, Inc. v. McMahon*, 515 F. Supp. 2d 1060, 1066 (D. Ariz. 2007)
7 (internal quotation marks omitted). Because Malofeev does not identify any allegedly
8 false statements, the Court is unable to conclude whether the statements relate to
9 Malofeev’s private life or his life as an alleged public figure. As such, this claim fails.

10 Section 43 of the Lanham Act, codified as 15 U.S.C. § 1125, “is a broad federal
11 unfair competition provision which protects unregistered trademarks.” *Van Praagh v.*
12 *Gratton*, 993 F. Supp. 2d 293, 301 (E.D.N.Y. 2014) (internal quotation marks and
13 alterations omitted). “An unregistered mark . . . can be protected under the Lanham Act
14 if it would qualify for registration as a trademark.” *Lopez v. Gap, Inc.*, 883 F. Supp. 2d
15 400, 414 (S.D.N.Y. 2012). “To qualify for trademark registration, a mark must be either
16 (1) inherently distinctive, where its intrinsic nature serves to identify its particular source;
17 or (2) distinctive by virtue of having acquired a secondary meaning in the minds of
18 consumers.” *Van Praagh*, 993 F. Supp. 2d at 302 (internal quotation marks and
19 alterations omitted).

20 Malofeev alleges his “name is distinctive as he is highly involved . . . in his local
21 community.” (Doc. 11, ¶ 38.) But the extent to which Malofeev is known in his
22 community is irrelevant. Trademark law protects names and symbols used in connection
23 with goods or services. Malofeev does not allege that his name is tied to a specific
24 product or service. Nor does he allege that his name is a registered trademark, or that he
25 has sought to register it. This claim fails as a matter of law.

26 Last, the Court finds no prejudice to Malofeev. He has failed to identify any
27 concrete harm suffered from the allegedly false information listed on the websites.¹ As

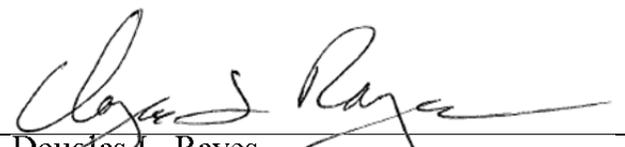
28 ¹ An internet search conducted by the Court on January 13, 2016 revealed that all

1 such, the Court finds Malofeev will not suffer harm in the absence of default judgment.

2 **IT IS ORDERED** that Plaintiff's motion for default judgment, (Doc. 52), is
3 **DENIED**. Within 7 days of the date of entry of this Order, Plaintiff shall show cause
4 why the case should not be dismissed. Failure to respond will result in termination of the
5 case without further order of the Court.

6 Dated this 19th day of January, 2016.

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Douglas L. Rayes
United States District Judge

of the websites have been taken down or are in the process of being cancelled. None of the content on any of the sites was able to be viewed.