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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Trident Investment Partners Incorporated,

No. CV-20-01848-PHX-DWL

10 Plaintiff,

ORDER

11 v.

12 Elizabeth Evans, et al.,

13 Defendants.
14

15 Pending before the Court is a motion for default judgment by Plaintiff Trident
16 Investment Partners Incorporated (“Trident”) against Defendants Elizabeth Evans
17 (“Evans”), John Doe Evans, and The Handy Connection LLC (collectively, “Defendants”) and a motion to amend the complaint to add Susan Solebello (“Solebello”), Evans’s spouse,
18 as a defendant. (Doc. 17.) For the following reasons, the motion for default judgment is
19 granted and the motion to amend is denied as moot.
20

21 **BACKGROUND**

22 I. Factual Background

23 The following facts are derived from Trident’s complaint. (Doc. 1.) “Since
24 November 1990, [Trident] and its predecessors . . . have operated repair services” under
25 the word and design service marks HANDYMAN CONNECTION. (*Id.* ¶ 8.)¹ In 1993,
26 Trident’s predecessor began “offering and selling Handyman Connection franchises in the

27 ¹ “[T]he only difference between a trademark and a service mark is that a trademark
28 identifies goods while a service mark identifies services.” *Chance v. Pac-Tel Teletrac Inc.*,
242 F.3d 1151, 1156 (9th Cir. 2001). “Service marks and trademarks are governed by
identical standards.” *Id.*

1 United States and Canada for the right to independently own and operate a Handyman
2 Connection franchised business” and to utilize the marks. (*Id.* ¶ 9.) In 2014, Trident
3 acquired the rights to the “marks and franchise system.” (*Id.*) Trident operates in “25
4 states, including Arizona.” (*Id.*)

5 Defendants, meanwhile, are “engaged in the business of providing home repair and
6 lighting services” and operate under the name “The Handy Connection” in Arizona. (*Id.*
7 ¶¶ 15-16, 20.) Defendants also have “adopted a design mark featuring a house design that
8 is nearly identical to the HANDYMAN CONNECTION design mark.” (*Id.* ¶ 16.) Trident,
9 which has “had a franchised location operating [in Arizona] since 2001” (*id.* ¶ 20), claims
10 that Defendants’ marks are confusingly similar to the HANDYMAN CONNECTION
11 marks (*id.* ¶ 17).

12 On June 10, 2020, Trident sent a cease and desist letter “objecting to Defendants’
13 use of the Infringing Mark and putting Defendants on actual notice that their use of the
14 Infringing Mark in connection with any type of home repair . . . constitutes trademark
15 infringement.” (*Id.* ¶ 19.)²

16 Defendants continue to operate under “The Handy Connection.” (*Id.*)

17 II. Procedural History

18 On September 22, 2020, Trident initiated this action by filing an eight-count
19 complaint, which includes federal claims under the Lanham Act and various state-law
20 claims. (Doc. 1.)

21 On September 25, 2020, Trident served process on Evans and The Handy
22 Connection LLC, as well as on Evans’s spouse, Solebello. (Docs. 10, 11, 12.)

23 On October 20, 2020, Trident applied for an entry of default against Evans, The

24 ² Trident sent this cease-and-desist letter to an address in Goodyear, Arizona. (Doc.
25 1-2 at 12.) However, Evans and Solebello live in Peoria, Arizona, as Trident discovered
26 when serving the complaint. (Docs. 10, 11, 12.) According to Trident’s service
27 documents, a woman purporting to be Evans’s aunt lives at the Goodyear address. (Doc.
28 11.) Trident does not acknowledge this oddity, but, in any event, the cease-and-desist letter
indicates that it was also sent to what appears to be Evans’s email address. (Doc. 1-2 at
12.) This email address matches the email address listed on The Handy Connection’s
Facebook page (Doc. 1-2 at 7), so the Court is satisfied that Trident has shown that
Defendants received the cease-and-desist letter, notwithstanding that it may not have been
physically mailed to the correct address.

1 Handy Connection LLC, and Solebello. (Doc. 15.)

2 On October 23, 2020, the Clerk of Court entered default against Evans, John Doe
3 Evans, and The Handy Connection LLC. (Doc. 16.) The Clerk did not enter default against
4 Solebello by name. (*Id.*)

5 On November 12, 2020, Trident moved for default judgment and moved to amend
6 its complaint to add Solebello as a defendant. (Doc. 17.)

7 DISCUSSION

8 I. Motion For Default Judgment

9 The “decision whether to enter a default judgment is a discretionary one.” *Aldabe*
10 *v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980). The following factors, known as the *Eitel*
11 factors, may be considered when deciding whether default judgment is appropriate: (1) the
12 possibility of prejudice to the plaintiff, (2) the merits of the claims, (3) the sufficiency of
13 the complaint, (4) the amount of money at stake, (5) the possibility of factual disputes, (6)
14 whether the default was due to excusable neglect, and (7) the policy favoring decisions on
15 the merits. *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986).

16 “[T]he general rule” for default judgment purposes “is that well-pled allegations in
17 the complaint regarding liability are deemed true.” *Fair Hous. of Marin v. Combs*, 285
18 F.3d 899, 906 (9th Cir. 2002). “The district court is not required to make detailed findings
19 of fact.” *Id.* “However, necessary facts not contained in the pleadings, and claims which
20 are legally insufficient, are not established by default.” *Cripps v. Life Ins. Co. of N. Am.*,
21 980 F.2d 1261, 1267 (9th Cir. 1992), *superseded by statute on other grounds as recognized*
22 *in United States v. Lozano*, 2020 WL 905676, *3 (S.D. Cal. 2020).

23 A. **The First, Fifth, Sixth, And Seventh *Eitel* Factors**

24 “In cases like this one, in which Defendants have not participated in the litigation at
25 all, the first, fifth, sixth, and seventh [*Eitel*] factors are easily addressed.” *Zekelman Indus.*
26 *Inc. v. Marker*, 2020 WL 1495210, *3 (D. Ariz. 2020.)

27 The first *Eitel* factor weighs in favor of default judgment. If the motion for default
28 judgment were denied, Trident would be without other recourse for recovery. *PepsiCo*,

1 *Inc. v. Cal. Sec. Cans*, 238 F. Supp. 2d 1172, 1177 (C.D. Cal. 2002).

2 The fifth and sixth factors weigh in favor of default judgment or are neutral. Due
3 to Defendants’ failure to participate, there is no dispute over material facts, and there is no
4 indication that default is due to excusable neglect. *Elektra Ent. Grp. Inc. v. Crawford*, 226
5 F.R.D. 388, 393 (C.D. Cal. 2005) (“Because all allegations in a well-pleaded complaint are
6 taken as true after the court clerk enters default judgment, there is no likelihood that any
7 genuine issue of material fact exists.”); *Laser Spine Inst., LLC v. Playa Advance Surgical*
8 *Inst., LLC*, 2020 WL 5658711, *4 (C.D. Cal. 2020) (“There is little possibility of excusable
9 neglect where a defendant fails to appear and respond”) (internal quotation marks
10 omitted).

11 The seventh factor generally weighs against default judgment, given that cases
12 “should be decided upon their merits whenever reasonably possible.” *Eitel*, 782 F.2d at
13 1472. However, the existence of Rule 55(b) of the Federal Rules of Civil Procedure, which
14 authorizes default judgments, “indicates that this preference, standing alone, is not
15 dispositive.” *PepsiCo*, 238 F. Supp. 2d at 1177 (internal quotation marks omitted). Put
16 simply, “the default mechanism is necessary to deal with wholly unresponsive parties who
17 otherwise could cause the justice system to grind to a halt. Defendants who appear to be
18 ‘blowing off’ the complaint should expect neither sympathy nor leniency from the court.”
19 2 Gensler, Federal Rules of Civil Procedure, Rules and Commentary, Rule 55, at 119-20
20 (2020) (footnote omitted).

21 **B. The Fourth *Eitel* Factor—The Amount Of Money At Stake**

22 Under the fourth *Eitel* factor, the Court considers the amount of money at stake in
23 relation to the seriousness of the defendant’s conduct. Here, Trident does not seek
24 damages. (Doc. 17 at 4.) Instead, Trident seeks a permanent injunction “that will prohibit
25 Defendants from using [Trident’s] trademarks or engaging in conduct that creates (or
26 would continue to create) the likelihood of confusion between [Trident] and Defendants,”
27 along with attorneys’ fees and costs. (*Id.* at 4, 8.)

28 In Part I.E below, the Court addresses the sufficiency of Trident’s evidence as to an

1 injunction, attorneys' fees, and costs. For purposes of the fourth *Eitel* factor, the Court
2 simply notes that “injunctive relief is an appropriate remedy in a trademark infringement
3 action,” which “weighs in favor of granting [a] motion for default judgment.” *Nestlé USA,*
4 *Inc. v. Gunther Grant, Inc.*, 2014 WL 12558008, *12 (C.D. Cal. 2014). *See also Am. Auto.*
5 *Ass’n, Inc. v. Lopez*, 2017 WL 2905999, *4 (C.D. Cal. 2017) (“Plaintiff has decided to
6 forgo its claims for damages and instead seeks a permanent injunction. A permanent
7 injunction with no money damages is reasonably proportionate to the harm caused by
8 Defendant’s actions. Accordingly, this factor weighs in favor of entering default
9 judgment.”) (citation omitted).

10 **C. The Second And Third *Eitel* Factors—Merits And Sufficiency**

11 That leaves the second and third *Eitel* factors—the merits of the claim and the
12 sufficiency of the complaint. “These two factors are often analyzed together and require
13 courts to consider whether a plaintiff has state[d] a claim on which [it] may recover.”
14 *Vietnam Reform Party v. Viet Tan-Vietnam Reform Party*, 416 F. Supp. 3d 948, 962 (N.D.
15 Cal. 2019) (alterations in original) (internal quotation marks omitted). “Of all the *Eitel*
16 factors, courts often consider the second and third factors to be the most important.” *Id.*

17 Here, Trident appears to request default judgment only as to its infringement, unfair
18 competition, and dilution claims. (Doc. 17 at 7.)

19 **1. Trademark Infringement**

20 “To prevail on a claim of trademark infringement under the Lanham Act, 15 U.S.C.
21 § 1114, a party must prove: (1) that it has a protectible ownership interest in the mark; and
22 (2) that the defendant’s use of the mark is likely to cause consumer confusion.” *Network*
23 *Automation, Inc. v. Advanced Sys. Concepts, Inc.*, 638 F.3d 1137, 1144 (9th Cir. 2011)
24 (internal quotation marks omitted).

25 **a. Trademark Ownership**

26 As an attachment to its complaint, Trident provided evidence of the marks’
27 registration in the federal Principal Register (Doc. 1-2 at 3-4), which is “prima facie
28 evidence of the mark’s validity and entitles the plaintiff to a strong presumption that the

1 mark is a protectable mark.” *Zobmondo Ent., LLC v. Falls Media, LLC*, 602 F.3d 1108,
2 1113 (9th Cir. 2010) (internal quotation marks omitted). The word mark has a filing date
3 of January 11, 1993, and the design mark has a filing date of February 26, 2004. (Doc. 1-
4 2 at 3-4.)³ However, the registration lists Neubel, Inc. (“Neubel”) as the owner of the word
5 mark and Mamar, Inc. (“Mamar”) as the owner of the design mark—not Trident. (*Id.*)

6 To support its allegations of ownership, Trident provided a declaration of Jeff Wall,
7 its president and CEO. (Doc. 17-1.)⁴ The declaration establishes that, although Neubel
8 originally owned the word mark, Neubel assigned ownership to Mamar in December 1993.
9 (Doc. 17-1 ¶ 5.) Mamar changed its name to Handyman Connection, Inc. in February
10 2012. (*Id.*; Doc. 17-2.) In January 2014, Handyman Connection, Inc. “merged with, and
11 into, Trident.” (Doc. 17-1 ¶ 5; Doc. 17-3 at 3-11.) Handyman Connection, Inc. then
12 assigned ownership of the word mark to Trident. (Doc. 17-3 at 1-2.)⁵ As for the design
13 mark, although Mamar originally owned the design mark, Trident obtained ownership of
14 the design mark when Handyman Connection, Inc. (formerly Mamar) and Trident merged
15 in 2014. (Doc. 17-1 ¶ 6; Doc. 17-3 at 1-2; Doc. 1-2 at 4 [serial number 76-577,851].)
16 Trident has sufficiently established that it owns the HANDYMAN CONNECTION marks.

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20 ³ The filing date, not the registration date, is the critical date for establishing a
21 presumption of ownership. *See, e.g., Sengoku Works Ltd. v. RMC Int’l, Ltd.*, 96 F.3d 1217,
22 1219 (9th Cir. 1996) (“[T]he registrant is granted a presumption of ownership, dating to
23 the filing date of the application for federal registration . . .”).

24 ⁴ In addition to well-pled allegations in the complaint admitted in default, courts also
25 consider “affidavits and other evidence to establish the truth of [a plaintiff’s] allegations.”
26 *Bd. of Trs. of Pipe Trades Dist. Council No. 36 Health & Welfare Tr. Fund v. Clifton*
27 *Enters., Inc.*, 2013 WL 2403573, *8 (N.D. Cal. 2013); *Hmong I v. Lao People’s*
28 *Democratic Republic*, 2016 WL 2901562, *3 n.3 (E.D. Cal. 2016) (collecting cases). *See*
also Denoyer v. PMI Sec. Prot. Inc., 2018 WL 1738217, *2 (S.D.N.Y. 2018); *Woods v. CV*
McDowell, LLC, 2018 WL 1187492, *3 (S.D. Tex. 2018); *Malibu Media, LLC v. Ling*, 80
F. Supp. 3d 1231, 1239 (D. Colo. 2015). *But see J & J Sports Prods., Inc. v. Paucar*, 2018
WL 4501057, *4 n.3 (E.D.N.Y. 2018) (“Plaintiff provided some information about the
transmission in the Gagliardi Affidavit but this cannot be considered on the liability
analysis as it is not the Complaint.”) (citation omitted).

⁵ The trademark assignment record from the Patent and Trademark Office lists the
word mark’s serial number (74-347,412, Doc. 1-2 at 3), rather than the registration number
(1,838,843, *id.*). (Doc. 17-3 at 1.)

1 “similarities are weighed more heavily than differences.” *GoTo.com*, 202 F.3d at 1206.
2 Less similarity between the marks is required if “the goods are complementary, the
3 products are sold to the same class of purchasers, or the goods are similar in use and
4 function.” *Sleekcraft*, 599 F.2d at 350 (citations omitted). Therefore, although there are
5 some minor differences between the marks, the similarities outweigh the differences. Less
6 similarity is sufficient in this case because Trident and Defendants both operate in the same
7 service market: home repair and remodeling services. (Doc. 1 ¶¶ 8, 15; Doc. 1-2 at 8-9
8 [describing the services offered by Defendants].) Trident and Defendants also both operate
9 in the same geographic market: the Handyman Connection franchise has operated in
10 Phoenix, Arizona since at least 2001. (Doc. 1 ¶ 20.)⁶

11 Trident has also sufficiently established actual confusion. Trident alleges in its
12 complaint that Defendants have caused “significant confusion among consumers,” as
13 “Handyman Connection has received inquiries as to whether The Handy Connection is
14 associated with the Handyman Connection franchise system” and some customers
15 “mistakenly contact[ed] ‘The Handy Connection’ when they had intended to contact
16 ‘Handyman Connection.’” (*Id.* ¶¶ 21, 24.) Trident has also proffered evidence of actual
17 confusion. Trident attached the declaration of Allen Hopkins, the owner and general
18 manager of Handyman Connection Phoenix, in support of its motion. (Doc. 17-4.)
19 Hopkins states that on or around September 21, 2020, a “potential customer contacted [the
20 Handyman Connection] office,” indicating that he had scheduled services from Handyman
21 Connection but was not listed in its system. (Doc. 17-4 ¶ 6.) “The customer asked if he
22 had reached ‘Handyman Connection’ and he confirmed that he had scheduled with
23 Handyman Connection.” (*Id.*) When the customer “asked if there was a person named
24 ‘Linda’ in the office and . . . was told there was not, the customer then said he must have
25 talked to ‘The Handy Connection.’” (*Id.*) Another incident occurred on or around October
26 27, 2020, after Trident filed this action, in which a customer inquired over email whether

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28 ⁶ Trident attached to its motion the declaration of Allen Hopkins, the owner and
general manager of Handyman Connection Phoenix, which states that Handyman
Connection has operated a franchise in Phoenix since 1995. (Doc. 17-4 ¶ 2.)

1 “Elizabeth Evans [was] the owner of Handyman Connection.” (*Id.* ¶ 7.)

2 Trident’s allegations and the evidence submitted by Trident establish a likelihood
3 of confusion and, thus, a claim for trademark infringement. Other courts have held that
4 similar showings are sufficient to establish a likelihood of confusion in the default-
5 judgment context. *See, e.g., Bob & Me Prods., Inc. v. Lemon Leaf Café, LLC*, 2020 WL
6 6468406, *4 (C.D. Cal. 2020) (plaintiff had successfully established likelihood of
7 confusion where “both logos [bore] the same restaurant name and an image of a lemon in
8 place of the ‘O’ in lemon”); *Sarieddine v. Area 51 Pharms, LLC*, 2020 WL 4539024, *3
9 (C.D. Cal. 2020) (plaintiff had alleged the marks were nearly identical, the defendant sold
10 related products, and there were instances of actual confusion).

11 2. Unfair Competition

12 Trident has also sufficiently established a common law unfair competition claim
13 because “trademark infringement and unfair competition claims brought under the
14 common law and the Lanham Act . . . share the same analysis.” *3 Ratonos Ciegos v. Mucha*
15 *Lucha Libre Taco Shop 1 LLC*, 2017 WL 4284570, *2 (D. Ariz. 2017). *See also Clearly*
16 *v. News Corp.*, 30 F.3d 1255, 1262-63 (9th Cir. 1994) (“This Circuit has consistently held
17 that state common law claims of unfair competition . . . are ‘substantially congruent’ to
18 claims made under the Lanham Act.”).

19 3. Trademark Dilution

20 To prevail on a dilution claim, a plaintiff must show that (1) its “mark is famous and
21 distinctive; (2) the defendant is making use of the mark in commerce; (3) the defendant’s
22 use began after the mark became famous; and (4) the defendant’s use of the mark is likely
23 to cause dilution by blurring or dilution by tarnishment.” *Jada Toys, Inc. v. Mattel, Inc.*,
24 518 F.3d 628, 634 (9th Cir. 2008). A mark is famous if it is “widely recognized by the
25 general consuming public of the United States as a designation of source of the goods or
26 services of the mark’s owner.” 15 U.S.C. § 1125(c)(2)(A). “[T]o meet the famousness
27 element of protection under the dilution statutes, a mark [must] be truly prominent and
28 renowned.” *Avery Dennison Corp. v. Sumpton*, 189 F.3d 868, 875-76 (9th Cir. 1999),

1 *superseded by statute on other grounds as recognized in Aegis Software, Inc. v. 22nd Dist.*
2 *Agric. Ass’n*, 255 F. Supp. 3d 1005, 1011 (S.D. Cal. 2017) (second alteration in original)
3 (internal quotation marks omitted). *See also Nissan Motor Co. v. Nissan Comput. Corp.*,
4 378 F.3d 1002, 1011 (9th Cir. 2004) (noting that the dilution statute “extends dilution
5 protection only to those whose mark is a household name”) (internal quotation marks
6 omitted); *Apple, Inc. v. Samsung Elecs. Co.*, 2012 WL 2571719, *7 (N.D. Cal. 2012) (“The
7 Ninth Circuit has recognized that fame requires a high standard of consumer awareness
8 beyond the trademark owner’s specific market—the mark should be a household name or
9 part of the collective national consciousness.”) (internal quotation marks omitted). Marks
10 that have met this exacting standard include TIFFANY, POLAROID, ROLLS ROYCE,
11 and KODAK. *Fruit of the Loom, Inc. v. Girouard*, 994 F.2d 1359, 1362 (9th Cir. 1993).

12 Trident has not stated a claim for trademark dilution because Trident has not
13 sufficiently alleged that its marks are famous. Trident merely makes the conclusory
14 allegation in its complaint that its marks “constitute famous marks within the meaning of
15 15 U.S.C. § 1125(c).” (Doc. 1 ¶ 38.) Trident did not provide any factual allegations
16 demonstrating that its marks are “widely recognized by the consuming public of the United
17 States,” “truly prominent and renowned,” “a household name,” or “part of the collective
18 national consciousness,” as courts in this Circuit have required to prevail on a dilution
19 claim.

20 **D. Balancing The Factors**

21 Having considered all of the *Eitel* factors, the Court concludes that default judgment
22 is appropriate as to Trident’s claims for trademark infringement and unfair competition.

23 **E. Injunctive Relief, Attorneys’ Fees, And Costs**

24 Trident seeks a permanent injunction, \$15,420 in attorneys’ fees, and \$400 in costs.
25 Each category is addressed below.

26 1. Permanent Injunction

27 “Injunctive relief is the remedy of choice for trademark and unfair competition
28 cases, since there is no adequate remedy at law for the injury caused by a defendant’s

1 continuing infringement.” *Century 21 Real Est. Corp. v. Sandlin*, 846 F.2d 1175, 1180
2 (9th Cir. 1988). *See also* 15 U.S.C. § 1116(a) (authorizing district courts to grant
3 injunctions to prevent the “violation of any right” of the owner of a registered mark).
4 Nevertheless, “[a]n injunction is a drastic and extraordinary remedy, which should not be
5 granted as a matter of course.” *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165
6 (2010). “[A]ctual irreparable harm must be demonstrated to obtain a permanent injunction
7 in a trademark infringement action.” *Herb Reed Enters., LLC v. Fla. Ent. Mgmt., Inc.*, 736
8 F.3d 1239, 1249 (9th Cir. 2013). To obtain an injunction, Trident must show that (1) “it
9 has suffered an irreparable injury,” (2) “remedies available at law, such as monetary
10 damages, are inadequate to compensate for that injury,” (3) “considering the balance of
11 hardships between the plaintiff and defendant, a remedy in equity is warranted,” and (4)
12 “the public interest would not be disserved by a permanent injunction.” *eBay, Inc. v.*
13 *MercExchange, LLC*, 547 U.S. 388, 391 (2006). “[T]he decision whether to grant or deny
14 injunctive relief rests within the equitable discretion of the district courts.” *Id.* at 394.

15 **a. Irreparable Harm**

16 Trident argues that, because it has demonstrated a likelihood of confusion, it is
17 entitled to a presumption that irreparable harm will arise in the absence of injunctive relief.
18 (Doc. 17 at 5.) However, the case that Trident cites to establish this proposition, which
19 was decided in 2011, is no longer good law. In 2013, the Ninth Circuit clarified that
20 “[g]one are the days when [o]nce the plaintiff in an infringement action has established a
21 likelihood of confusion, it is ordinarily presumed that the plaintiff will suffer irreparable
22 harm if injunctive relief does not issue.” *Herb Reed*, 736 F.3d at 1250 (second alteration
23 in original) (internal quotation marks omitted). This is because “[t]his approach collapses
24 the likelihood of success and the irreparable harm factors.” *Id.* at 1251. Accordingly, the
25 law is now clear that “actual irreparable harm must be demonstrated to obtain a permanent
26 injunction in a trademark infringement action.” *Id.* at 1249. “[H]arm to . . . reputation and
27 goodwill, *supported by compelling evidence*, is sufficient to establish irreparable
28 harm.” *Apple Inc. v. Pystar Corp.*, 673 F. Supp. 2d 943, 949 (N.D. Cal. 2009) (emphasis

1 added). *See also Stuhlberg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 841 (9th
2 Cir. 2001), *overruled on other grounds by Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S.
3 7 (2008) (“*Evidence of threatened loss of prospective customers or goodwill certainly*
4 *supports a finding of the possibility of irreparable harm.*”) (emphasis added).

5 Notwithstanding Trident’s mistaken belief that it is entitled to a presumption of
6 irreparable harm, the Court concludes that the evidence and allegations proffered by
7 Trident are sufficient—albeit only by a whisker—to establish that it has suffered
8 irreparable harm and will continue to do so in the absence of injunctive relief. As noted,
9 Trident has submitted a declaration identifying two recent incidents in which potential
10 customers believed they were contracting with the Handyman Connection but were, in fact,
11 contracting with the Handy Connection. Trident also alleges that it has “invested
12 significant time, money and other resources to advertise, promote and garner goodwill in
13 the [marks] and Handyman Connection brand generally.” (Doc. 1 ¶ 10.) Finally, the
14 evidence before the Court establishes that Defendants chose to continue their course of
15 infringing conduct even after being served with a cease-and-desist letter. Although it is
16 true that, “[s]ince *Herb Reed*, numerous district courts have held that evidence of consumer
17 confusion—including actual consumer confusion that has already occurred—is not
18 sufficient to establish a likelihood of irreparable harm,” *Samick Music Corp. v. Gordon*,
19 2020 WL 3210613, *10 (C.D. Cal. 2020), the Court concludes that Trident’s evidence and
20 allegations are sufficient to establish that actual harm has occurred and will continue
21 occurring absent injunctive relief. *Cf. Bob & Me Products*, 2020 WL 6468406 at *8
22 (issuing permanent injunction as part of default judgment because plaintiff had spent time
23 and resources promoting its mark, had established the loss of business due to the
24 defendant’s infringement, and the defendant continued infringing after being given notice);
25 *Starbuzz Tobacco, Inc. v. Ego Premium Liquids, Inc.*, 2014 WL 12573365, *4 (C.D. Cal.
26 2014) (awarding permanent injunction in trademark infringement action, where
27 “Defendants’ infringement [led] consumers to conclude, incorrectly, that the infringing
28 materials that Defendants are advertising originate with or are authorized by Starbuzz,”

1 because such conduct caused “loss of control over business reputation” and traded “upon
2 Starbuzz’s goodwill and business reputation”).

3 **b. Inadequate Remedy At Law**

4 “District courts must ascertain whether remedies available at law, such as monetary
5 damages, are inadequate to compensate for the injury suffered.” *Apple*, 673 F. Supp. 2d at
6 949. Monetary damages are inadequate where, for example, there is good reason to believe
7 infringement will continue. *Id.* at 950 (“[M]onetary damages would not prevent
8 [defendant] from continuing to infringe [plaintiff’s] copyrights . . . in the future . . . ; indeed,
9 [defendant’s] actions throughout this litigation and statements at oral argument reveal a
10 dogged determination to continue”). Here, Defendants received a cease-and-desist
11 letter informing them they were infringing Trident’s marks yet they did not respond or stop
12 their infringement. (Doc. 1 ¶ 19; Doc. 17-1 ¶ 11.) This factor weighs in favor of granting
13 a permanent injunction. *Adobe Sys. Inc. v. Acheampong*, 2019 WL 7212311, *9 (N.D. Cal.
14 2019) (“Defendant’s failure to appear in this action makes it difficult for plaintiff to prevent
15 further infringement.”). *Cf. Athena Cosmetics, Inc. v. AMN Distrib. Inc.*, 2020 WL
16 6450395, *3 (C.D. Cal. 2020) (“[W]ithout discovery from Newman—which is impossible
17 in light of his failure to appear—Plaintiff cannot adequately calculate its past and
18 continuing monetary loss, thereby rendering legal damages inadequate.”).

19 **c. Balance Of Hardships**

20 “[T]here is no indication that Defendant would suffer hardship were the court to
21 grant an injunction, as Defendant would only be required to stop using the Mark and would
22 be able to continue to operate its business.” *Bob & Me Prods.*, 2020 WL 6468406, at *9.
23 *See also Mikuni Ginko, Ltd. v. Feng Chen Buffet, Inc.*, 2020 WL 2128646, *5 (C.D. Cal.
24 2020) (“[T]he balance of hardships favors a permanent injunction because Defendant will
25 suffer no hardship from being required to comply with law and Plaintiff would otherwise
26 lose profits and goodwill.”) (citation omitted). Accordingly, this factor weighs in favor of
27 granting a permanent injunction.

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d. Public Interest

An injunction “would not disserve the public interest, but would instead ensure compliance with trademark law. The purpose of protecting trademarks is to avoid consumer confusion and to ensure that a producer reaps the rewards of having developed desirable products. By forcing Defendant[s] to cease infringing . . . this Court upholds these aims, as intended by the Lanham Act.” *PRL USA Holdings, Inc. v. Designerbrandsforless, Inc.*, 2020 WL 6694348, *5 (C.D. Cal. 2020) (citation omitted). *See also Internet Specialties W., Inc. v. Milon-DiGiorgio Enters., Inc.*, 559 F.3d 985, 993 n.5 (9th Cir. 2009) (“The public has an interest in avoiding confusion between two companies’ products.”). This too weighs in favor of granting a permanent injunction.

e. Scope

Because all factors weigh in Trident’s favor, the Court will grant its request for a permanent injunction. “[A]n injunction must be narrowly tailored to affect only those persons over which [the Court] has power and to remedy only the specific harms shown by the plaintiff[], rather than to enjoin all possible breaches of the law.” *Price v. City of Stockton*, 390 F.3d 1105, 1117 (9th Cir. 2004) (citation and internal quotations omitted). However, “[w]hen the infringing use is for a similar service, a broad injunction is especially appropriate.” *GoTo.com*, 202 F.3d at 1211 (internal quotation marks omitted).

Trident proposes a permanent injunction which would enjoin Defendants from:

- (1) using service marks, trademarks, trade names or trade dress in connection with the advertisement, promotion, offering or rendering of home repair or remodeling services, or the offering of home repair franchises, that imitate or simulate Handyman Connection’s service marks, trademarks, trade names or trade dress;
- (2) performing any actions or using any service marks, trademarks, trade names, trade dress, words, names, styles, titles, designs or marks that are likely to cause confusion or mistake, or to deceive, or to otherwise mislead the trade or public into believing that Defendants are authorized by Handyman Connection, or in some manner affiliated with or associated with, or under the supervision or control of Handyman Connection, or are likely in any way to lead the trade or the public to associate Defendants with Handyman Connection;

- 1 (3) using any service marks, trademarks, trade names or trade dress or
2 engaging in any other conduct that creates a likelihood of injury to the
3 business reputation of Handyman Connection or a likelihood of
4 misappropriation and dilution of Handyman Connection’s distinctive
5 service marks, trademarks, trade names and trade dress and the
6 goodwill associated therewith; and
7 (4) using any trade practices whatsoever, including those complained of
8 in the Complaint, that tend to unfairly compete with or injure
9 Handyman Connection, its businesses and the goodwill appertaining
10 thereto.

11 (Doc. 17-8.) Because Trident and Defendants offer the same type of services, the Court in
12 its discretion determines that Trident’s requested injunction is appropriate, with the
13 following adjustments. The reference to dilution will be omitted because Trident did not
14 prevail on its dilution claim. The Court will also only enjoin infringement of the word and
15 design marks that Trident asserted in this action.

16 2. Entitlement To Attorneys’ Fees

17 The Lanham Act authorizes courts to award “reasonable attorney fees to the
18 prevailing party” in “exceptional” trademark infringement actions. 15 U.S.C. § 1117(a).
19 “[A]n ‘exceptional case’ is simply one that stands out from others with respect to the
20 substantive strength of a party’s litigating position (considering both the governing law and
21 the facts of the case) or the unreasonable manner in which the case was litigated.”
22 *SunEarth, Inc. v. Sun Earth Solar Power Co.*, 839 F.3d 1179, 1180 (9th Cir. 2016) (en
23 banc) (per curiam) (quoting *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 572 U.S.
24 545, 554 (2014)). “District courts may determine whether a case is ‘exceptional’ in the
25 case-by-case exercise of their discretion, considering the totality of the circumstances.”
26 *Octane Fitness*, 572 U.S. at 554.

27 “Courts applying the *Octane Fitness* analysis commonly find that willful
28 infringement, in conjunction with non-participation in litigation, makes a case
‘exceptional.’” *ADG Concerns, Inc. v. Tsalevich LLC*, 2018 WL 4241967, *13 (N.D. Cal.
2018) (collecting cases). Trident has alleged that Defendants’ infringement is willful
because Defendants continued to infringe Trident’s marks after receiving a cease-and-

1 desist letter. (Doc. 1 ¶ 19.) By defaulting, Defendants have admitted they have committed
2 willful infringement. *Derek Andrew, Inc. v. Poof Apparel Corp.*, 528 F.3d 696, 702 (9th
3 Cir. 2008) (“[A]ll factual allegations in the complaint are deemed true, including the
4 allegation of Poof’s willful infringement of Andrew’s trademarks. This default sufficiently
5 establishes Andrew’s entitlement to attorneys’ fees under the Lanham Act.”). Defendants’
6 willful infringement, coupled with their failure to participate in the litigation, entitles
7 Trident to reasonable attorneys’ fees under the Lanham Act.

8 3. *Reasonableness Of The Requested Fee Award*

9 Trident seeks \$15,420 in attorneys’ fees, consisting of \$7,815 charged by Arizona
10 counsel (Doc. 17-5) and \$7,605 charged by Pennsylvania counsel (Docs. 17-6, 17-7). For
11 the reasons explained below, the Court awards \$11,610 in fees.

12 **a. Arizona Counsel**

13 A declaration attached to the motion establishes the credentials and experience of
14 attorney David Brooks and his billing rate. (Doc. 17-5.) Brooks has practiced for 31 years
15 and charged \$350/hour, and his paralegal charged \$100/hour. (*Id.* ¶¶ 2-3.) The Court finds
16 the hourly rates charged to be reasonable and within the range of rates courts in this District
17 have found reasonable. *See, e.g., Edwards v. Vemma Nutrition*, 2019 WL 5684192, *13
18 (D. Ariz. 2019) (finding hourly rate of \$350 for an attorney who had practiced 35 years
19 reasonable and collecting cases).

20 A table containing Brooks’s time spent on this matter was also attached. (Doc. 17-
21 5 at 4-5.) The Court has reviewed Brooks’s time entries and finds that many fail to provide
22 sufficient details. “The party seeking an award of fees must adequately describe the
23 services rendered so that the reasonableness of the charge can be evaluated.” LRCiv
24 54.2(e)(2). “If the time descriptions are incomplete, or if such descriptions fails to
25 adequately describe the service rendered, the court may reduce the award accordingly.” *Id.*
26 Time entries for telephone conferences “must identify all participants and the reason for
27 the telephone call.” LRCiv 54.2(e)(2)(A). Similarly, time entries for emails or other
28 correspondence that do not “identify to whom the [correspondence] was sent or the subject

1 matter of the [correspondence]” are insufficient. *Oskowis v. Sedona Oak-Creek Unified*
2 *Sch. Dist. #9*, 2019 WL 5066821, *8 (D. Ariz. 2019) (declining to grant attorneys’ fees for
3 insufficient time entries). Time entries for legal research must “identify the specific legal
4 issue researched and, if appropriate, . . . identify the pleading or document the preparation
5 of which occasioned the conduct of the research.” LRCiv 54.2(e)(2)(B).

6 The Court will reduce the fee award accordingly. The Court will not award fees for
7 the billing entries on September 17, 2020 and October 16, 2020, which fail to provide
8 subject matter of the respective correspondence. The Court will not award fees for the
9 billing entry on September 28, 2020, which merely states “Paralegal expense.” The Court
10 will also reduce the fees requested for the following billing entries by 50%: September 29,
11 2020; October 15, 2020; October 20, 2020; October 21, 2020; October 22, 2020.⁷ The
12 Court will reduce the fees requested in the October 28, 2020 entry by 10%. Last, the Court
13 will not award fees for the billing entry on November 3, 2020, which was completed by an
14 unidentified individual. After adjusting the amount sought consistent with the reductions
15 identified above, the Court awards Trident \$6,062 for Arizona counsel’s fees.

16 **b. Pennsylvania Counsel**

17 Trident’s Pennsylvania counsel did not appear in this case but “prepared and sent
18 the demand letter to Defendants . . . and prepared the initial drafts of the complaint.” (Doc.
19 17-5 ¶ 4.) A declaration attached to the motion establishes the billing rates and length of
20 practice of Trident’s three Pennsylvania attorneys. (Doc. 17-6.) David Allsman has
21 practiced for 16 years and charged \$425/hour, Ariel Multak has practiced for 1 year and
22 charged \$400/hour, and Joseph Brooks has practiced for 3 years and charged \$350/hour.
23 (*Id.* ¶ 4.)

24 Although the declaration provides no explanation why Allsman’s hourly rate was
25 higher than his more experienced Arizona co-counsel, the Court nevertheless finds that
26 Allsman’s hourly rate is reasonable and is within the range that other courts in this District

27 ⁷ These entries listed more than one task within a single entry, some of which are
28 insufficient. Because the tasks are listed together in a block, the Court is unable to
determine how much time was spent on each task. The Court accordingly awards only a
portion of the requested fees for those entries. *See* LRCiv 54.2(e)(2).

1 have deemed reasonable. *See, e.g., Swisher Hygiene Franchise Corp. v. Clawson*, 2019
2 WL 4169003, *10 (D. Ariz. 2019), *amended upon reconsideration on other grounds*, 2020
3 WL 2512788 (D. Ariz. 2020). The declaration also does not explain why Multak, who was
4 admitted to practice in 2019, has a higher hourly rate than Brooks, who was admitted to
5 practice in 2017, nor does the declaration explain why an attorney who has been admitted
6 to practice for just over a year warrants a \$400/hour billing rate. *Cf. id.* (finding associate
7 rates between \$212.50 and \$276.25 to be reasonable). “A party seeking fees must prove
8 that the hourly rate sought is reasonable.” *Arnhoelter v. Kaus*, 2020 WL 4673160, *4 (D.
9 Ariz. 2020). Because Trident failed to provide enough information to gauge the
10 reasonableness of Multak’s hourly rate, the Court will reduce Multak’s rate to \$300/hour.

11 Pennsylvania counsel’s time entries have many of the same deficiencies as those of
12 their local counterparts. The Court will not award fees for the following billing entries due
13 to counsel’s failure to disclose the subject matter of the referenced conference or
14 correspondence: June 5, 2020; June 11, 2020; and September 14, 2020. The Court will not
15 award fees for the billing entry on June 8, 2020, which merely states “attn to Phoenix
16 infringer.” The Court will also reduce the fees requested for the following billing entries
17 by 40%: Allsman’s entry on August 7, 2020; August 27, 2020; September 3, 2020;
18 September 4, 2020; September 15, 2020; September 17, 2020; and September 22, 2020.⁸
19 After adjusting the amount sought consistent with the reductions identified above, the
20 Court awards Trident \$5,548 for Pennsylvania counsel’s fees.

21 In total, the Court awards Trident \$11,610 in attorneys’ fees.

22 4. Costs

23 Trident also requests \$400 in costs, consisting of the complaint filing fee. “In cases
24 where the plaintiff is the prevailing party, the Lanham Act [also] assigns the payment of
25 litigation costs to the defendant.” *Athena Cosmetics, Inc. v. Timbo Trading Co.*, 2020 WL
26 4805470, *3 (C.D. Cal. 2020) (citing 15 U.S.C. § 1117(a)). The Court accordingly awards

27 ⁸ These entries listed more than one task within a single entry, some of which are
28 insufficient. Because the tasks are listed together in a block, the Court is unable to
determine how much time was spent on each task. The Court accordingly awards only a
portion of the requested fees for those entries. *See* LRCiv 54.2(e)(2).

1 the requested \$400 in costs.

2 5. Post-Judgment Interest

3 In its motion, Trident requests that “post-judgment interest be awarded at the
4 statutory rate according to law.” (Doc. 17 at 9.) Trident does not provide any justification
5 for its alleged entitlement to post-judgment interest. The Court thus declines to award post-
6 judgment interest.

7 II. Motion To Amend Complaint

8 Trident also moves to amend the complaint to add Solebello, Evans’s spouse, as a
9 defendant. (Doc. 17 at 8.) Trident “originally sued Elizabeth Evans and John Doe Evans,
10 alleging they are a married couple.” (*Id.*) Accordingly, the Clerk of Court entered default
11 against “Unknown Evans.” (Doc. 16.) Trident argues that, because Solebello was served
12 with the complaint and summons, an “amendment should be allowed adding Susan
13 Solebello as Elizabeth Evans’ spouse and default judgment should be rendered against her
14 as well.” (Doc. 17 at 8.)

15 Susan Solebello is already a Defendant in this action, albeit named under a
16 pseudonym. She was named in this action only in her capacity as “the spouse of Elizabeth
17 Evans” and is sued only because “Evans’ conduct . . . was for and on behalf of her marital
18 community and is binding on her marital community.” (Doc. 1 ¶ 3.)

19 On September 25, 2020—three days after the complaint was filed—a process server
20 personally served Solebello. (Doc. 12.) Indeed, all of the Defendants in this action were
21 served via hand-delivery to Solebello (Docs. 10, 11), who informed the process server that
22 “she is Elizabeth’s spouse.” (Doc. 11.) Solebello called Evans on the telephone, and Evans
23 then gave the process server “verbal permission to leave the documents with [Solebello].”
24 (*Id.*) Accordingly, throughout the pendency of this litigation, Solebello has been aware
25 that she is a defendant in this action and that she has been named under the pseudonym
26 “John Doe Evans.” (Doc. 1.)

27 Although Trident asserted in the complaint that it would amend the complaint
28 “when the name of Elizabeth Evans’ spouse becomes known,” (Doc. 1 ¶ 3), it has not done

1 so and seeks leave to do so now. Such an amendment would be a mere formality—it would
2 not add a defendant but rather would merely clarify (not change) the identity of an existing
3 defendant (the “Doe” defendant—known to all to be Solebello).

4 The motion for default judgment against all Defendants, including Solebello, is ripe
5 for resolution now and further delay is not in the interest of speedy determination of this
6 action. Solebello was properly served. (Doc. 12.) The Clerk of Court entered default
7 against Solebello, under the designation “Unknown Evans,” which is synonymous with the
8 “John Doe Evans” pseudonym. (Doc. 16.) Solebello knows this pseudonym refers to her.
9 There is no impediment to the Court entering default judgment against Solebello now. *See,*
10 *e.g., Malibu Media, LLC v. Doe*, 2020 WL 134112, *3 (E.D. Mich. 2020) (“Plaintiff
11 provided a proof of service indicating that the summons, amended complaint and its
12 exhibits, and the corporate disclosure statement were personally served on Defendant John
13 Doe Granting a default judgment therefore comports with the requirements of due
14 process.”).

15 Furthermore, for clarity’s sake, the Court will order the Clerk of Court to amend the
16 caption to replace the pseudonym “Unknown Evans, named as John Doe” with the proper
17 name for this defendant, Susan Solebello. All allegations in the complaint as to “John Doe
18 Evans,” or any other pseudonym clearly referring to Evans’s spouse, shall be deemed to
19 pertain to Solebello. *See, e.g., Twitch Interactive, Inc. v. Johnston*, 2019 WL 3387977, *3
20 (N.D. Cal. 2019) (“[T]here is no doubt that Mr. Kelly is aware of his own pseudonym. The
21 Court finds that it would be in the interest of justice to [amend the caption to replace
22 pseudonym with proper name] because it will ensure that the correct person is named and
23 properly held accountable. . . . All allegations in the complaint against ‘Alex Renfrow’
24 shall be deemed to be allegations against Jared Kelly.”) (citations omitted).

25 The Court thus denies Trident’s motion to amend as moot.

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Accordingly,

IT IS ORDERED that the Clerk of Court is directed to amend the caption to replace the pseudonym “Unknown Evans, named as John Doe” with the proper name for this defendant, Susan Solebello.

IT IS FURTHER ORDERED that the request to amend the complaint is denied as moot.

IT IS FURTHER ORDERED that the motion for default judgment (Doc. 17) is **granted** as to all Defendants: Evans, Solebello, and The Handy Connection LLC. A separate judgment against Defendants will issue, after which the Clerk of Court shall terminate this action.

Dated this 8th day of January, 2021.



Dominic W. Lanza
United States District Judge