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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Whaleco Incorporated,

10 Plaintiff,

11 v.

12 Muhammad Arslan, et al.,

13 Defendants.
14

No. CV-23-02549-PHX-DLR

ORDER

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16 Plaintiff Whaleco Incorporated operates an e-commerce platform called TEMU,
17 which launched in the United States in September 2022 using the TEMU name and
18 trademark, including a distinctive orange logo. Whaleco alleges that a host of websites are
19 infringing its trademarks and has sued the infringing websites *in rem* and the owners of
20 these websites personally under federal and state trademark laws. (Doc. 29.) Whaleco
21 previously sought and was granted an *ex parte* temporary restraining order requiring,
22 among other things, that Defendants disable the infringing websites and cease further
23 infringing activities. (Docs. 10, 18.) In granting that relief, the Court found Whaleco was
24 likely to succeed on the merits of its claims. (Doc. 18.) That *ex parte* TRO later was
25 converted to a preliminary injunction after Defendants failed to appear and respond to the
26 preliminary injunction motion, despite being served. (Docs. 21, 23.) Whaleco subsequently
27 applied for entry of default against Defendants, which the Clerk of the Court granted.
28 (Docs. 35, 36.) Now before the Court is Whaleco's motion for entry of a default judgment.

1 (Doc. 38.)

2 Whether to enter a default judgment is discretionary. *Aldabe v. Aldabe*, 616 F.2d
3 1089, 1092 (9th Cir. 1980). The Court may consider the following factors when deciding
4 whether default judgment is appropriate: (1) the possibility of prejudice to the plaintiff, (2)
5 the merits of the claims, (3) the sufficiency of the complaint, (4) the amount of money at
6 stake, (5) the possibility of factual disputes, (6) whether default is due to excusable neglect,
7 and (7) the policy favoring decisions on the merits. *See Eitel v. McCool*, 782 F.2d 1470,
8 1471-72 (9th Cir. 1986). In considering the merits and sufficiency of the complaint, the
9 Court accepts as true the complaint's well-pled factual allegations. *See Geddes v. United*
10 *Fin. Grp.*, 559 F.2d 557, 560 (9th Cir. 1977). Although the Court should consider and
11 weigh relevant factors as part of the decision-making process, it "is not required to make
12 detailed findings of fact." *Fair Housing of Marin v. Combs*, 285 F.3d 899, 906 (9th Cir.
13 2002).

14 These factors favor entry of default judgment. Whaleco's Verified Second Amended
15 Complaint (Doc. 29) sufficiently alleges claims of trademark infringement and unfair
16 competition under 15 U.S.C. § 1114, 15 U.S.C. § 1125, and Arizona common law;
17 counterfeiting under 15 U.S.C. §§ 1114(1)(b), 1116(d); cybersquatting under 15 U.S.C. §
18 1125(d)(1)(A); and trademark dilution under 15 U.S.C. § 1125(c) and A.R.S. § 44-1448.01.
19 In granting preliminary injunctive relief, the Court previously determined that Whaleco is
20 likely to succeed on its claims, and by failing to appear and defend against the allegations,
21 Defendants have done nothing to dispel the Court's assessment. If default judgment is not
22 granted, Whaleco "will likely be without other recourse for recovery." *PepsiCo, Inc. v. Cal.*
23 *Sec. Cans*, 238 F. Supp. 2d 1172, 1177 (C.D. Cal. 2002). Because Defendants are in default,
24 there are no genuine factual disputes that would preclude granting the motion. *Id.* There is
25 no evidence that Defendants' default was the result of excusable neglect. Whaleco seeks
26 statutory damages against Defendant Eric Jones in the amount of \$50,000; Defendants
27 Joseph Nguyen and Philip Ja in the amount of \$100,000 each; Defendants Cong Yan and
28 Ayoub Gege in the amount of \$150,000 each; Defendant Muhammad Arslan in the amount

1 of \$200,000; Defendants Arvind Mishra and Mithila Carols in the amount of \$200,000
2 each; Defendant Mostafa Ibnelkhattab in the amount of \$250,000; and Defendants Frances
3 Clarke, Mobidea Limited, Norris Bellemare, Charles Young, Edward Beattie, Vitalii
4 Korotieiev, and Mike Seaver jointly and severally in the amount of \$500,000. Whaleco also
5 seeks a permanent injunction and an award of attorney fees. (Doc. 38-2.) Although these
6 amounts are substantial, they are supported by the facts and law as detailed in Whaleco’s
7 motion. (Doc. 38 at 17-22.) Finally, although cases “should be decided on their merits
8 whenever reasonably possible” *Eitel*, 782 F.2d at 1472, the existence of Federal Rule of
9 Civil Procedure 55(b) “indicates that this preference, standing alone, is not dispositive.”
10 *PepsiCo*, 238 F. Supp. 2d at 1177 (citation omitted). Accordingly,

11 **IT IS ORDERED** that Whaleco’s motion for default judgment (Doc. 38) is
12 **GRANTED** as follows:

- 13 1. Judgment will be entered in favor of Whaleco on all claims alleged in the
14 Verified Second Amended Complaint (Doc. 29);
- 15 2. Defendants, their officers, agents, servants, employees, attorneys, and all those
16 in active concert or participation with them having notice of this Order, are
17 permanently enjoined from violating the TEMU Marks (as that term is defined
18 in Whaleco’s motion for entry of default judgment) by:
 - 19 a. Using, registering, or seeking to use or register any name, mark, trade
20 name, company name, domain name, source identifier, or designation
21 comprised of or containing the TEMU mark, logo, or any similar term(s)
22 or design in any manner likely to cause confusion with Whaleco and/or
23 the TEMU Marks or to otherwise injure Whaleco and/or its goodwill and
24 reputation;
 - 25 b. Representing, by any means whatsoever, directly or indirectly, that
26 Defendants, their services/goods, and/or their activities originate from,
27 are sponsored by, or are associated, affiliated, or connected with Whaleco
28 in any way;

- 1 c. Using, linking, transferring, selling, exercising control over, or otherwise
2 owning the Infringing Domain Names or any other domain name that
3 incorporates, in whole or in part, any of the TEMU Marks, or any domain
4 name that is used in connection with any infringing website or webpage;
5 d. Creating, operating, owning, overseeing, or otherwise exercising control
6 over any infringing website, webpage or parked page embedding,
7 incorporating, including, or otherwise displaying the TEMU Marks, or
8 any version of Whaleco's names in promotion, advertising, or pay per
9 click campaigns; and Assisting, aiding, and/or abetting any other person
10 or business entity in engaging in or performing any of the above activities.

11 3. Pursuant to 15 U.S.C. § 1125(d)(2)(D)(i), within 10 days from the date of service
12 of this Order, Namecheap, Inc. shall transfer the Infringing Domain Names (as
13 that term is defined in Whaleco's motion for default judgment) to Whaleco, and
14 the Cybersquatting Defendants (as that term is defined in Whaleco's motion for
15 default judgment) shall not take any action to interfere with or prevent such
16 transfer of the Infringing Domain Names. Because Cybersquatting Defendants
17 have not appeared in this action and are in default, this Order authorizes
18 Namecheap, Inc. to transfer the Infringing Domain Names to Whaleco without
19 consent or other action by Cybersquatting Defendants;

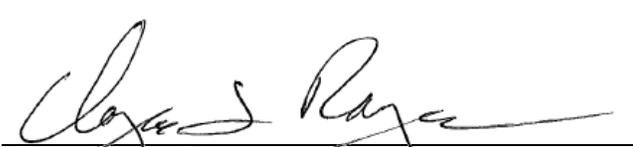
20 4. Within 10 days from the date of service of this Order, Cybersquatting
21 Defendants shall transfer all domain names that include or resemble the TEMU
22 Marks that are registered or owned by Cybersquatting Defendants, whether
23 registered through Namecheap, Inc. or any other domain name register,
24 including without limitation the Infringing Domain Names;

25 5. The Individual Defendants (as that term is defined in Whaleco's motion for
26 default judgment) shall pay statutory damages to Whaleco as follows:

- 27 a. Pursuant to 15 U.S.C. § 1117(c)(2) and/or 15 U.S.C. 1117(d), Defendant
28 Eric Jones to pay \$50,000;

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- b. Pursuant to 15 U.S.C. § 1117(c)(2) and/or 15 U.S.C. 1117(d), Defendants Joseph Nguyen and Philip Ja each to pay \$100,000;
 - c. Pursuant to 15 U.S.C. § 1117(c)(2) and/or 15 U.S.C. 1117(d), Defendants Cong Yan and Ayoub Gege each to pay \$150,000;
 - d. Pursuant to 15 U.S.C. § 1117(c)(2) and/or 15 U.S.C. 1117(d), Defendant Muhammad Arslan to pay \$200,000;
 - e. Pursuant to 15 U.S.C. § 1117(c)(2), Defendants Arvind Mishra and Mithila Carols each to pay \$200,000;
 - f. Pursuant to 15 U.S.C. § 1117(c)(2) and/or 15 U.S.C. 1117(d), Defendant Mostafa Ibelkhattab to pay \$250,000;
 - g. Pursuant to 15 U.S.C. § 1117(c)(2), Defendants Frances Clarke, Mobidea Limited, Norris Bellemare, Charles Young, Edward Beattie, Vitalii Korotieiev, and Mike Seaver jointly and severally to pay \$500,000.
6. Whaleo may apply for its reasonable attorney fees within 14 days from the date of this Order.
7. The Clerk of the Court shall enter judgment accordingly and terminate this case.
- Dated this 5th day of March, 2025.



Douglas L. Rayes
Senior United States District Judge