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6 **United States District Court**
7 **Central District of California**
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9 STARBUCKS CORPORATION d/b/a
10 STARBUCKS COFFEE COMPANY, a
11 Washington corporation

12 Plaintiff,

13 v.

14 HITMAN GLASS, a California
15 corporation; JAMES LANDGRAF, an
16 individual residing in Oregon; and DOES
17 1 through 10, inclusive,
18 Defendants.

Case No. 2:16-CV-03937-ODW(PJW)

**ORDER GRANTING PLAINTIFF'S
MOTION FOR ENTRY OF
DEFAULT JUDGMENT [34]**

19 **I. INTRODUCTION**

20 Plaintiff Starbucks Corporation (“Starbucks”) moves for entry of default
21 judgment against Defendant James Landgraf (“Landgraf”) on Starbucks’ claims for
22 trademark dilution, copyright infringement, trademark infringement, and false
23 designation of origin. For the reasons discussed below, the Court **GRANTS**
24 Starbucks’ Motion. (ECF No. 34.)¹

25 **II. FACTUAL BACKGROUND**

26 Starbucks is the country’s leading purveyor of *Arabica* coffee, with
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28 ¹ After considering the papers filed in support of the Motion, the Court deems the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78(b); C.D. Cal. L.R. 7-15.

1 approximately 12,000 retail locations in the United States and more than 10,000
2 locations abroad. (Compl. ¶ 21, ECF No. 1.) Starbucks produces billions of dollars in
3 revenue every year through its stores, authorized accounts, website, and more. (*Id.* ¶¶
4 22–25.)

5 For over 20 years, Starbucks has continuously used its trademarks, including its
6 Siren Logo and its 40th Anniversary Siren Logo (collectively, “Starbucks’ Marks”), to
7 identify its goods and promote its brand. (*Id.* ¶ 10.) Starbucks’ Marks are
8 prominently displayed in its stores and on its products, which include coffee, coffee
9 equipment, glassware, and many other types of branded merchandise. (*Id.* ¶ 21, 23,
10 24.) Starbucks owns registered trademarks for its Siren Logo in both a black and
11 white color-scheme, and a green, black, and white color-scheme, and has used the two
12 color-schemes since 1989 and 1994, respectively. (*Id.* ¶¶ 13–14, Ex. 1.) Starbucks
13 also owns registered trademarks for its 40th Anniversary Siren Logo in a black and
14 white color-scheme and a green and white color-scheme, and has used the two color-
15 schemes since 2011. (*Id.* ¶¶ 17–18, Ex. 1.) Starbucks alleges that Landgraf infringed
16 upon its Marks by using virtually identical logos on glass bongos, clothing, and
17 novelties in his “Dabuccino” line of products. (*Id.* ¶ 30–39.)

18 On June 3, 2016, Starbucks filed a Complaint against Defendants Hitman Glass
19 and James Landgraf. (ECF No. 1.) Landgraf never filed an answer and the Clerk of
20 Court entered default on August 31, 2016. (ECF No. 26.) Starbucks’ motion for
21 default judgment is now before the Court for decision. (ECF No. 34.)

22 **III. LEGAL STANDARD**

23 Federal Rule of Civil Procedure 55(b) authorizes a district court to enter a
24 default judgment after the Clerk of Court enters default. *Aldabe v. Aldabe*, 616 F.2d
25 1089, 1092 (9th Cir. 1980). Upon the Clerk’s entry of default, the defendant’s
26 liability is conclusively established, and the well-pled factual allegations in the
27 complaint are accepted as true. *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917–
28 19 (9th Cir. 1987) (per curiam) (citing *Geddes v. United Fin. Grp.*, 559 F.2d 557, 560

1 (9th Cir. 1977)).

2 In exercising its discretion to enter a default judgment, a court considers several
3 factors (the “*Eitel* Factors”), including: (1) the possibility of prejudice to plaintiff; (2)
4 the merits of plaintiff’s substantive claim; (3) the sufficiency of the complaint; (4) the
5 sum of money at stake; (5) the possibility of a dispute concerning material facts; (6)
6 whether the defendant’s default was due to excusable neglect; and (7) the strong
7 policy underlying the Federal Rules of Civil Procedure favoring decisions on the
8 merits. *Eitel v. McCool*, 782 F.2d 1470, 1471–72 (9th Cir. 1986).

9 IV. DISCUSSION

10 A. Procedural Requirements

11 Before a court can enter a default judgment against a defendant, the plaintiff
12 must satisfy the procedural requirements set forth in Federal Rules of Civil Procedure
13 54(c) and 55, as well as Local Rule 55-1. Local Rule 55-1 requires that the movant
14 submit a declaration establishing: (1) when and against which party the default was
15 entered; (2) the pleading to which the default was entered; (3) whether the defaulting
16 party is a minor, incompetent person, or active service member; and (4) that the
17 defaulting party was properly served with notice if required. *Vogel v. Rite Aid Corp.*,
18 992 F. Supp. 2d 998, 1006 (C.D. Cal. 2014).

19 Starbucks has fulfilled these requirements. Starbucks’ counsel Seth A. Gold
20 submitted a declaration establishing that: (1) a default was entered by the Clerk
21 against Landgraf on August 31, 2016; and (2) Landgraf is not a minor, incompetent
22 person, or active service member. (Gold Decl. ¶¶ 6, 8, ECF No. 34.) Starbucks
23 served Landgraf with notice of this action on August 1, 2016 pursuant to Rule
24 55(b)(2). (*Id.* ¶ 2; *see* Proof of Service, ECF No. 19.) Lastly, Starbucks has complied
25 with Federal Rule of Civil Procedure 54(c) by requesting remedies not different in
26 kind from those prayed for in the Complaint. (Mot. at 18–25.) Thus, the Court finds
27 that Starbucks has satisfied the procedural prerequisites for the entry of a default
28 judgment.

1 **B. *Eitel* Factors**

2 The Court finds that the *Eitel* factors weigh in favor of entering a default
3 judgment against Landgraf. The Court discusses each factor in turn.

4 **1. Starbucks Would Suffer Prejudice**

5 The first *Eitel* factor considers whether a plaintiff will suffer prejudice if a
6 default judgment is not entered. *PepsiCo Inc. v. Cal. Sec. Cans*, 238 F. Supp. 2d
7 1172, 1177 (C.D. Cal. 2002). The Court finds that this factor favors entering a default
8 judgment because Landgraf failed to appear or offer a defense in this case. Therefore,
9 the only way Starbucks can obtain relief is through a default judgment.

10 **2. Starbucks Brought a Meritorious Claim and Starbucks' Complaint**
11 **Was Sufficiently Pled**

12 The second and third factors, examining the merits of a plaintiff's substantive
13 claims and the sufficiency of its Complaint, require a plaintiff to "state a claim upon
14 which [it] may recover." *See Philip Morris USA, Inc. v. Castworld Prods., Inc.*, 219
15 F.R.D. 494, 499 (C.D. Cal. 2003).

16 a. Federal and State Dilution Claims

17 Starbucks brings both a federal trademark dilution claim under the Lanham Act
18 and a state trademark dilution claim under the California Business and Professions
19 Code against Landgraf. 15 U.S.C. § 1125(c); Cal. Bus. & Prof. Code § 14247. The
20 analysis under both statutes is the same. *Jada Toys, Inc. v. Mattel, Inc.*, 518 F.3d 628,
21 634 (9th Cir. 2008). To establish either a federal or California dilution claim, a
22 plaintiff must show that "(1) the mark is famous and distinctive; (2) the defendant is
23 making use of the mark in commerce; (3) the defendant's use began after the mark
24 became famous; and (4) the defendant's use of the mark is likely to cause dilution by
25 blurring or dilution by tarnishment." *Id.*; 15 U.S.C. § 1125(c)(1).

26 To determine whether a mark is famous and distinctive, courts take into account
27 several factors, including (i) the duration, extent, and geographic reach of advertising
28 and publicity related the mark; (ii) the amount, volume, and geographic extent of sales

1 of goods or services offered under the mark, (iii) the actual extent of the mark’s
2 recognition; and (iv) whether the mark was registered. 15 U.S.C. § 1125(c)(2)(A).

3 Starbucks’ Marks are well known to the public. Both the Siren Logo and the
4 40th Anniversary Siren Logo have been used worldwide in Starbucks’ approximately
5 22,000 retail locations: the Siren Logo for more than twenty years and the 40th
6 Anniversary Logo for five. (Compl ¶¶ 12, 16, 21.) Billions of transactions are
7 completed every year involving products that bear Starbucks’ Marks. (*Id.* ¶ 22.) In
8 the United States, Starbucks has fifteen trademark registrations for the Siren Mark and
9 six trademark registrations for the 40th Anniversary Siren Mark. (*Id.* ¶¶ 13–14, 15,
10 17–18, 19, Ex. 1, Ex. 2.) Thus, Starbucks’ Marks are unmistakably famous.

11 It is also clear that Landgraf has been using Starbucks’ Marks to sell his
12 products. In conjunction with co-defendant Hitman Glass, Landgraf sold Dabuccino
13 glass bongos, hat pins, stickers and t-shirts bearing logos substantially similar to
14 Starbucks’ Marks for prices up to \$8,000. (*Id.* ¶ 34.) Further, Landgraf also sold the
15 Dabuccino products outside of his dealings with Hitman Glass. (*Id.* ¶ 35.) Thus, the
16 second element is satisfied.

17 The third element is satisfied as well. Sales of the infringing products began in
18 2015, long after Starbucks’ Marks became famous. (*Id.* ¶ 31, 45.) Indeed, the
19 Dabuccino products were expressly inspired by the fame and relatability of Starbucks’
20 Marks. (*Id.* ¶ 38.)

21 Finally, Landgraf’s use of Starbucks’ Marks is likely to cause dilution by
22 blurring. Where a plaintiff’s claim is based on a dilution by blurring theory, the
23 question is whether the “association arising from the similarity between a mark or
24 trade name and a famous mark . . . impairs the distinctiveness of the famous mark.”
25 15 U.S.C § 1125(c)(2)(B). Courts may consider all relevant factors in making this
26 determination, including (i) the degree of similarity between the mark or trade name
27 and the famous mark; (ii) the degree of inherent or acquired distinctiveness of the
28 famous mark; (iii) the extent to which the owner of the famous mark is engaging in

1 substantially exclusive use of the mark; (iv) the degree of recognition of the famous
2 mark; (v) whether the user of the mark or trade name intended to create an association
3 with the famous mark; (vi) any actual association between the mark or trade name and
4 the famous mark. *Id.*

5 First, Starbucks has shown that Landgraf’s products bear logos substantially
6 similar to Starbucks’ Marks through its inclusion of side-by-side images in the
7 pending motion. (Compl. ¶ 33.) Second, Starbucks’ Marks are inherently distinctive
8 and arbitrary because they use artistic Siren designs to sell coffee.² (*Id.* ¶ 47.); *see*
9 *Fortune Dynamic, Inc. v. Victoria’s Secret Stores Brand Mgmt., Inc.*, 618 F.3d 1025,
10 1033 (9th Cir. 2010). Third, Starbucks seeks to ensure exclusive use of its Marks
11 through its registrations of the Marks and its monitoring of all of its distribution
12 channels to ensure compliance with its intellectual property policies. (Compl. ¶ 25.)
13 Fourth, Starbucks’ Marks have a high degree of recognition; the specific Marks at
14 issue have been used throughout the world for years in its stores, on its products, and
15 in its advertising. (*Id.* ¶ 21–29, 44.) Fifth, it is clear from public statements by
16 Hitman Glass and Landgraf that they intended to create an association with the
17 famous mark. For example, the Dabuccino Series One bong is advertised as “[t]aking
18 inspiration from one of America’s favorite frozen coffee drinks” and “easily
19 relatable.” (*Id.* ¶ 38.) The social media response from consumers also shows that an
20 association has been created between the Dabuccino products and Starbucks’ products
21 that bear Starbucks’ Marks. (*Id.*) Given that the first five factors plainly show that
22 Landgraf’s infringing use of Starbucks’ Marks is likely to cause dilution, the Court
23 finds that Starbucks’ federal and state dilution claims are meritorious and sufficiently
24 pled.

25 ² “A mark’s conceptual strength depends largely on the obviousness of its connection to the good or
26 service to which it refers. The less obvious the connection, the stronger the mark, and vice versa . . .
27 . [A]rbitrary marks [are] actual words [or symbols] with no connection to the product—such as
28 Apple computers and Camel cigarettes.” *Fortune Dynamic, Inc. v. Victoria’s Secret Stores Brand
Mgmt., Inc.*, 618 F.3d 1025, 1033 (9th Cir. 2010). Here, Starbucks’ Marks are arbitrary because the
Siren depicted in the Marks has no connection to coffee-based products.

1 b. Copyright Infringement Claim

2 Starbucks has also sufficiently pled a meritorious copyright infringement claim
3 against Landgraf. In order to state a claim for copyright infringement under the
4 Copyright Act, Starbucks must show: “(1) ownership of a valid copyright, and (2)
5 copying of constituent elements of the work that are original.” *Feist Publications, Inc.*
6 *v. Rural Tel. Serv. Co.*, 499 U.S. 340, 361 (1991); 17 U.S.C. § 501. However, given
7 that “direct evidence” of copying is usually unavailable, a plaintiff may satisfy the
8 second prong by showing “that the infringer had access to the work and that the two
9 works are substantially similar.” *Shaw v. Lindheim*, 919 F.2d 1353, 1356 (9th Cir.
10 1990). Starbucks has satisfied both prongs of the test here.

11 First, Starbucks owns valid copyrights in both the Siren Logo and 40th
12 Anniversary Siren Logo. Starbucks owns United States copyright Reg. No. VA 875-
13 932 in connection with the Siren Logo and copyright Reg. No. VA 1-768-520 in
14 connection with the 40th Anniversary Siren Logo. (Compl. ¶¶ 15, 19.) Starbucks
15 attached copies of the registration certificates to its Complaint. (ECF No. 1) Thus,
16 the first prong of the test is satisfied.

17 Second, Starbucks has shown that Landgraf copied protected elements of its
18 Marks. Most importantly, Starbucks included this side-by-side comparison of its
19 Marks and the infringing Dabuccino products in its Complaint, displaying how
20 Landgraf’s designs are substantially similar to Starbucks’ Marks.

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(Compl. ¶ 33). The Court therefore finds that Starbucks has sufficiently pled a meritorious copyright infringement claim.

c. Trademark Infringement and False Designation of Origin Claims

Finally, the Court finds that Starbucks has sufficiently pled meritorious claims for trademark infringement and false designation of origin. To prevail on a trademark infringement claim under the Lanham Act, a plaintiff must establish that it “owns a valid, legally protectable trademark and . . . Defendants have used the trademark or a mark similar to the trademark without Plaintiff’s consent in a manner that is likely to cause confusion among ordinary consumers.” *Scream, Inc. v. Elgawly*, No. CV 16-840-R, 2016 WL 4967710, at *1 (C.D. Cal. Sept. 14, 2016); 15 U.S.C. § 1114(1).

Starbucks easily satisfies the first element, as it owns registered trademarks for both the Siren Logo and the 40th Anniversary Siren Logo. (Compl. ¶¶ 13–14, 17–18, Ex. 1.) Thus, the critical determination is whether Landgraf’s use of Starbucks’ Marks has created a likelihood that the consuming public will be confused as to who makes what product. *Jada Toys*, 518 F.3d at 632. Courts generally weigh eight

1 factors (the “*Sleekcraft* Factors”) in determining whether a likelihood of confusion
2 exists: “(1) strength of the mark; (2) proximity of the goods; (3) similarity of the
3 marks; (4) evidence of actual confusion; (5) marketing channels used; (6) type of
4 goods and the degree of care likely to be exercised by the purchaser; (7) defendant's
5 intent in selecting the mark; and (8) likelihood of expansion of the product lines.”
6 *AMF Inc. v. Sleekcraft Boats*, 599 F.2d 341, 348–349 (9th Cir. 1979), *abrogated on*
7 *other grounds by Mattel, Inc. v. Walking Mountain Prods.*, 353 F.3d 792 (9th Cir.
8 2003). These factors are “‘pliant,’ illustrative rather than exhaustive, and best
9 understood as simply providing helpful guideposts.” *Fortune Dynamic*, 618 F.3d at
10 1030. A plaintiff “need not satisfy every factor, provided that strong showings are
11 made with respect to some of them.” *Survivor Media, Inc. v. Survivor Prods.*, 406
12 F.3d 625, 631 (9th Cir. 2005).

13 Here, the Court finds that Starbucks has satisfied the *Sleekcraft* Factors. First,
14 Starbucks’ Marks are famous and inherently distinctive (as analyzed above). Thus,
15 this factor weighs heavily in Starbucks’ favor. *See Century 21 Real Estate Corp. v.*
16 *Sandlin*, 846 F.2d 1175, 1179 (9th Cir. 1988) (“Marks may be strengthened by
17 extensive advertising, length of time in business, public recognition, and
18 uniqueness”). Second, the proximity of the parties’ goods and services weighs in
19 favor of Starbucks, as Landgraf has used the nearly identical Dabuccino logos on t-
20 shirts and pins, product types which Starbucks’ trademark registrations protect.
21 (Compl. ¶ 14, 17, 18, 33, 75.) Third, as analyzed above, Landgraf’s Dabuccino logos
22 are virtually identical to Starbucks’ Marks. (*Id.* ¶ 33.)

23 Fourth, consumers have already associated Starbucks’ Marks and Landgraf’s
24 infringing logos, as evidenced by the social media user comments excerpted in the
25 pending motion. (*Id.* ¶ 38-39.) Evidence “of actual confusion is not necessary to
26 finding a likelihood of confusion.” *Hand & Nail Harmony, Inc. v. ABC Nail & Spa*
27 *Prod.*, No. SA CV 16–0969–DOC (JEMx), 2016 WL 3545524, at *5 (C.D. Cal. June
28 28, 2016). Rather, a “likelihood of confusion ‘will be found whenever consumers are

1 likely to assume that a mark is associated with another source or sponsor because of
2 similarities between the two marks.’” *Id.* (citing *SATA GmbH & Co. Kg v. Wenzhou*
3 *New Century Int’l, Ltd.*, No. CV 15–08157–BRO (EX), 2015 WL 6680807 (C.D. Cal.
4 Oct. 19, 2015)). Because consumers have already associated Landgraf’s products
5 with Starbucks’ Marks, the Court finds that the likelihood of confusion factor weighs
6 in favor of Starbucks.

7 Fifth, the marketing channels factor weighs in Starbucks’ favor because both
8 Starbucks’ products and the Dabuccino line are promoted on the internet. (Compl. ¶
9 14, 26, 38.) Sixth, the type of goods and degree of care element weighs slightly in
10 favor of Starbucks as well, since the Dabuccino products at issue are t-shirts, pins, and
11 other novelties, all products that Starbucks offers. Because these products are
12 generally smaller and less valuable than other items, it is possible that buyers will not
13 scrutinize them as closely as they would other, larger, products. Seventh, Landgraf
14 has demonstrated a clear intent to infringe on Starbucks’ Marks. Promotion of the
15 Dabuccino products expressly sought to link the infringing products with Starbucks’
16 Marks. (*Id.* ¶ 38.) The Dabuccino products even included a “Certificate of
17 Authenticity” featuring the infringing logos. (*Id.* ¶ 39.) Given that virtually all³ of the
18 *Sleekcraft* elements weigh in Starbucks’ favor, the Court finds that Starbucks has
19 sufficiently pled a meritorious claim for trademark infringement.⁴

20 3. The Amount at Stake Weighs in Favor of Default Judgment

21 The fourth *Eitel* factor balances the sum of money at stake with the “seriousness
22 of the action.” *Lehman Bros. Holdings Inc. v. Bayporte Enters., Inc.*, No. C 11–0961–

23 ³ While it is unclear whether the likelihood of expansion factor is satisfied, it is not necessary for
24 Starbucks to establish every *Sleekcraft* element in its favor.

25 ⁴ Because Starbucks can establish the merits of its trademark infringement claim, it need not go
26 through a separate analysis for the false designation claim as the two analyses are effectively
27 identical. *See Brookfield Communications, Inc. v. West Coast Entm't Corp.*, 174 F.3d 1036, 1047 n.
28 8 (9th Cir.1999) (noting that infringement and false designation of origin claims are effectively
identical, except that false designation of origin claims protect both registered and unregistered
trademarks and can protect a wider range of practices, such as false advertising); *Truong Giant Corp*
v. Twinstar Tea Corp., No. C 06–035494 JSW, 2007 WL 1545173, at *4 (N.D.Cal. May 29, 2007).

1 CW (MEJ), 2011 WL 6141079, at *7 (N.D. Cal. Oct. 7, 2011) (internal citations and
2 quotations omitted). The amount at stake must not be disproportionate to the harm
3 alleged. *Id.* Default judgments are disfavored where the sum of money at stake is too
4 large or unreasonable in relation to defendant’s conduct. *Truong Giang Corp. v.*
5 *Twinstar Tea Corp.*, No. C 06–03594 JSW, 2007 WL 1545173, at *12 (N.D. Cal. May
6 29, 2007).

7 The Court finds the damages requested by Starbucks are reasonable. To begin,
8 statutory damages “are appropriate in default judgment cases because the information
9 needed to prove actual damages is within the infringers’ control and is not disclosed.”
10 *Microsoft Corp. v. Nop*, 549 F. Supp. 2d 1233, 1238 (E.D. Cal. 2008). Statutory
11 damages are appropriate here because Starbucks cannot fully ascertain its actual
12 damages as Landgraf has failed to cooperate or file an answer in these proceedings.
13 Starbucks’ request for statutory damages falls within the parameters set forth in the
14 Copyright Act, allowing recovery up to \$150,000 per willful infringement. 17 U.S.C.
15 § 504(c). Starbucks alleges that two of its copyrights were infringed; thus its
16 \$300,000 request represents the maximum amount that may be recovered under the
17 Copyright Act. *Walt Disney Co. v. Powell*, 897 F.2d 565, 569 (D.C. Cir. 1990)
18 (“[S]tatutory damages are to be calculated according to the number of works
19 infringed, not the number of infringements.”). Given that copyright infringement
20 awards can range into the millions of dollars, the Court finds that Starbucks’ \$300,000
21 request is reasonable. *See Sream*, 2016 WL 4967710, at *2 (finding that a plaintiff’s
22 request for \$300,000 in damages was not too large or unreasonable to grant a default
23 judgment); *Wecosign, Inc. v. IFG Holdings, Inc.*, 845 F. Supp. 2d 1072, 1082 (C.D.
24 Cal. 2012) (entering default judgment when plaintiff requested \$1,023,157.27 in
25 damages).

26 Starbucks’ request for compensatory damages under the Lanham Act is also
27 reasonable, as it seeks \$99,000 in actual damages, the same amount of profit that
28 Landgraf received from co-defendant Hitman Glass to create the infringing products.

1 (See Gold Decl. ¶ 9.) Finally, Starbucks’ request for attorney’s fees under the Lanham
2 Act and the Copyright Act, calculated pursuant to the schedule set forth in Rule 55-3,
3 is also reasonable. 15 U.S.C. § 1117(a); 17 U.S.C. § 505; Cal. C.D. Civ. L.R. 55-3.
4 Given that all of Starbucks’ requests for damages fit squarely within the statutory
5 schemes of the Lanham and Copyright Acts, the Court finds that the fourth *Eitel*
6 weighs in favor of default judgment.

7 **4. There is Little Possibility of Dispute as to Material Facts**

8 The next *Eitel* factor considers the possibility that material facts are disputed.
9 *PepsiCo*, 238 F. Supp. 2d at 1177; *Eitel*, 782 F.2d at 1471–72; see *Auto. Indus.*
10 *Pension Trust Fund v. Bi-City Paint & Body Co.*, No. C 12–01972 LB, 2012 WL
11 6799735, at *5 (N.D. Cal. Dec. 6, 2012) (“Given that the issues are easily
12 ascertainable, the possibility for substantial fact disputes seems unlikely”). The Court
13 finds there is little possibility of a dispute arising as to the material facts in this case
14 for two reasons. First, based on the images of the infringing work provided by
15 Starbucks, a dispute over the design appears unlikely given the strong similarities
16 between Starbucks’ Marks and the Dabuccino logos. (Compl. ¶ 33.) Second, given
17 that Starbucks’ Marks are ubiquitous in the United States and the infringing
18 Dabuccino products were specifically marketed using the statement “[t]aking
19 inspiration from one of America’s favorite frozen coffee drinks, this cup is hugely
20 popular with most people and easily relatable,” Landgraf obviously had access to
21 Starbucks’ Marks and intended to infringe upon them. (*Id.* ¶ 21–29, 38) As such, the
22 Court finds that this factor weighs in favor of default judgment.

23 **5. There is Little Possibility That Default was Due to Excusable Neglect**

24 Landgraf’s default does not appear to be the result of excusable neglect. There
25 is little possibility of excusable neglect when the defendant fails to respond after being
26 properly served. See *Wecosign*, 845 F. Supp. 2d at 1082. Here, Landgraf was
27 properly served with the Complaint on August 1, 2016. (Gold Decl. ¶ 2.) Even after
28 service, Landgraf failed to respond or appear before this Court. Accordingly, the

1 Court finds the sixth *Eitel* factor favors entry of a default judgment.

2 **6. Decision on the Merits**

3 In *Eitel*, the court maintained that “[c]ases should be decided upon their merits
4 whenever reasonably possible.” *Eitel*, 782 F.2d at 1472. However, where, as here, a
5 defendant fails to answer the plaintiff’s complaint, “a decision on the merits [is]
6 impractical, if not impossible.” *PepsiCo*, 238 F. Supp. 2d at 1177. Because Landgraf
7 failed to respond to Starbucks’ Complaint, the Court finds that the seventh *Eitel* factor
8 favors entry of default judgment. After reviewing Starbucks’ motion in light of the
9 *Eitel* factors, the Court finds an entry of default judgment appropriate. The Court now
10 turns to Starbucks’ requested relief.

11 **C. Remedies**

12 Starbucks requests permanent injunctive relief, statutory damages under the
13 Copyright Act in the amount of \$300,000, compensatory damages under the Lanham
14 Act in the amount of \$99,000, and attorneys’ fees. The Court addresses each request
15 in turn.

16 **1. Injunctive Relief**

17 Starbucks’ first seeks permanent injunctive relief against Landgraf under both
18 the Lanham Act and the Copyright Act. (Compl. Prayer for Relief ¶ 2, 3.); *see* 15
19 U.S.C. § 1116(a); 17 U.S.C. § 502(a). Permanent injunctive relief is available as part
20 of a default judgment. *See Philip Morris*, 219 F.R.D. at 502.

21 Under the Lanham Act, Starbucks seeks a permanent injunction that would bar
22 Landgraf from “making, using, selling, offering to sell, importing into these United
23 States, displaying, advertising any product or service bearing or utilizing in any way
24 the Starbucks Marks, including but not limited to (i) using any of the Starbucks’
25 registered and common law trademarks in any way that dilutes or is likely to dilute
26 any of the Starbucks Marks; (ii) using any of Starbucks’ registered and common law
27 trademarks including the Starbucks Marks in connection with the operation of
28 Defendants’ businesses, promotional offers, advertising, marketing, or on Defendants’

1 products; (iii) using any trademark, logo, words, or design that tends to falsely
2 represent or is likely to confuse, mislead, or deceive consumers, purchasers,
3 Defendants’ customers, prospective customers or any member of the public that
4 Defendants’ promotions, advertisements, products, or services originate from
5 Starbucks or have been sponsored, approved, or licensed by, or are otherwise
6 associated with Starbucks or are in any way connected or affiliated with Starbucks;
7 and (iv) selling or distributing any of the merchandise in the Dabuccino product line.”
8 (Compl. Prayer for Relief ¶ 2.)

9 Under the Lanham Act, “the district court [has] the ‘power to grant injunctions
10 according to principles of equity and upon such terms as the court may deem
11 reasonable, to prevent the violation of any right of the trademark owner.” *Reno Air
12 Racing Ass’n v. McCord*, 452 F.3d 1126, 1137 (9th Cir.2006) (citing 15 U.S.C. §
13 1116(a)). In fact, “[i]njunctive relief is the remedy of choice for trademark and unfair
14 competition cases, since there is no adequate remedy at law for the injury caused by a
15 defendant's continuing infringement.” *Century 21*, 846 F.2d at 1180. In order for the
16 Court to grant a permanent injunction, Starbucks must show: “(1) that it has suffered
17 an irreparable injury; (2) that remedies available at law, such as monetary damages,
18 are inadequate to compensate for that injury; (3) that, considering the balance of
19 hardships between the plaintiff and defendant, a remedy in equity is warranted; and
20 (4) that the public interest would not be disserved by a permanent injunction.” *eBay
21 Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006).

22 Starbucks has not demonstrated that it has suffered irreparable injury. The
23 Ninth Circuit has held that “actual irreparable harm must be demonstrated to obtain a
24 permanent injunction in a trademark infringement action.” *Herb Reed Enterprises,
25 LLC v. Florida Entm't Mgmt., Inc.*, 736 F.3d 1239, 1249 (9th Cir. 2013). Here,
26 Starbucks argues that it has suffered irreparable harm because it faces the threat of a
27 “loss of prospective customers, goodwill, [and] reputation” due to Landgraf’s
28 infringement. (Mot. at 19–20.) Nonetheless, Starbucks has failed to show how any of

1 these harms have actually transpired as a result of Landgraf’s actions. Instead, it notes
2 that some consumers have drawn an association between the Dabuccino products and
3 Starbucks’ Marks on social media. (Compl. ¶ 38–39.) When combined with
4 Starbucks’ lack of analysis on how the remedies available at law are inadequate to
5 compensate for its alleged injuries, Starbucks has not established the necessary
6 elements to receive a permanent injunction under the Lanham Act.

7 Starbucks also requests a permanent injunction under the Copyright Act that
8 would bar Landgraf “from reproducing, making derivative works of, distributing, or
9 displaying the materials protected by the Starbucks Copyrights or any substantially
10 similar materials including those materials comprising the Dabuccino product line.”
11 (Compl. Prayer for Relief ¶ 3.); 17 U.S.C. § 502(a). The Court also declines to grant
12 Plaintiff this requested injunction under the Copyright Act, finding that the damages at
13 law in this case, of over \$400,000, are sufficient to deter Landgraf’s future
14 infringement of Starbucks’ Marks.

15 **2. Statutory Damages Under the Copyright Act**

16 Starbucks also seeks \$300,000 in statutory damages under the Copyright Act.
17 (Mot. at 23.) The Copyright Act allows a copyright owner to pursue statutory
18 damages in lieu of actual damages any time before final judgment is rendered. 17
19 U.S.C. § 504(c)(1). When a plaintiff shows that a defendant willfully infringed its
20 copyright, it may be awarded up to \$150,000 per copyright violated. *Id.*; *see Sweet*
21 *People Apparel, Inc. v. Zipper Clothing*, No. CV 12–02759–ODW (CWx), 2012 WL
22 1952842, at *5 (C.D. Cal. May 31, 2012). Courts “frequently infer willfulness where
23 a defendant defaults.” *Id.* (citing to *Derek Andrew, Inc. v. Poof Apparel Corp.*, 528
24 F.3d 696, 702 (9th Cir.2008) (“All factual allegations in the complaint are deemed
25 true, including the allegation of [defendants’] willful infringement . . . ”)); *Autodesk,*
26 *Inc. v. Flores*, No. 10–CV–01917–LHK, 2011 WL 337836, at *8 (N.D. Cal. Jan 31,
27 2011) (slip copy) (“Willfulness may also be inferred or admitted based on a
28 defendant's failure to defend”). Given Landgraf’s failure to respond in the case and

1 his explicit acknowledgment that his products are substantially similar or at least
2 closely related to products featuring Starbucks' Marks, his infringement was willful.

3 The Court "has wide discretion in determining the amount of statutory damages
4 to be awarded, constrained only by the specified maxima and minima." *Harris v.*
5 *Emus Records Corp.*, 734 F.2d 1329, 1335 (9th Cir. 1984). When considering the
6 amount of damages to award, the Court must look to the "nature of the copyright, the
7 circumstances of the infringement and the like." *Peer Int'l Corp. v. Pausa Records,*
8 *Inc.*, 909 F.2d 1332, 1336 (9th Cir. 1990) (quoting *L.A. Westermann Co. v. Dispatch*
9 *Printing Co.*, 249 U.S. 100, 106–07 (1919)). Further, "[e]ven for uninjurious and
10 unprofitable invasions of copyright the court may, if it deems it just, impose a liability
11 within statutory limits to sanction and vindicate the statutory policy." *F. W.*
12 *Woolworth Co. v. Contemporary Arts*, 344 U.S. 228, 233 (1952).

13 Here, Starbucks requests \$300,000, the statutory maximum for the willful
14 infringements of two copyrights. The Court concludes that this amount is reasonable
15 in light of Starbucks' inability to fully ascertain its exact damages and the
16 preeminence of Starbucks' Marks.

17 **3. Compensatory Damages Under the Lanham Act**

18 Starbucks also seeks \$99,000 in compensatory damages under the Lanham Act.
19 (Mot. at 23.) The Lanham Act allows for the recovery of a defendant's profits and the
20 costs of prosecuting an action for willful violation of Section 1125(c). While a
21 plaintiff must choose between recovering statutory damages and actual damages under
22 either the Lanham Act and the Copyright Act, nothing prohibits a plaintiff from
23 seeking statutory damages under one act and actual damages under the other, or vice
24 versa. *See Nintendo of Am., Inc. v. Dragon Pac. Int'l*, 40 F.3d 1007, 1011 (9th Cir.
25 1994).

26 As analyzed above, Landgraf's infringements were willful violations of Section
27 1125(c) of the Lanham Act. Landgraf received \$99,000 from Hitman Glass for his
28 work on the Dabuccino line. (Gold Decl., ¶ 9.) Therefore, Starbucks is entitled to

1 actual damages in the amount of \$99,000 in order to recover the profits Landgraf
2 made from infringing on Starbucks' Marks.

3 **4. Attorney's Fees**

4 Finally, Starbucks seeks attorneys' fees under both the Lanham Act and the
5 Copyright Act. (Mot. at 24); 15 U.S.C. § 1117(a); 17 U.S.C. § 505. When a party
6 seeks statutory attorneys' fees, the award is subject to the constraints outlined in Local
7 Rule 55-3. If an applicable statute provides for the recovery of attorneys' fees and the
8 total monetary judgment in the case is over \$100,000, the court must set attorneys'
9 fees at \$5,600 plus 2% of the amount over \$100,000 that is awarded. C.D. Cal. R. 55-
10 3. Because the applicable statutes of the Lanham Act and Copyright Act provide for
11 the recovery of attorney's fees, the Court will award such fees in accordance with the
12 Local Rules. 15 U.S.C. § 1117(a); 17 U.S.C. § 505.

13 Here, the total judgment against Landgraf exceeds \$100,000, and thus the Court
14 will award Starbucks \$5,600 plus 2% of the award over the \$100,000 threshold. The
15 initial award totals \$399,000, after the statutory and actual damages are combined.
16 Therefore, the Court awards Starbucks \$11,580 in attorneys' fees (\$5,600 + \$5,980).
17 *See Vogel*, 992 F.Supp.2d at 1016 (applying Rule 55-3 schedule to award fees in a
18 default judgment context).

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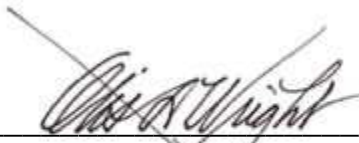
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V. CONCLUSION

For the reasons discussed above, the Court **GRANTS** Starbucks' Motion for Default Judgment against Landgraf. The Court **DENIES** Starbucks' request for permanent injunctions under both the Lanham and Copyright Acts, but **GRANTS** Starbucks' request for \$410,580 in damages and attorneys' fees. Upon entry of judgment, the Clerk of the Court shall close the case against Landgraf.

IT IS SO ORDERED.

October 20, 2016



OTIS D. WRIGHT, II
UNITED STATES DISTRICT JUDGE