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United States District Court  
Central District of California

TEMPUR SEALY INTERNATIONAL,  
INC. et al.,

Plaintiffs,

v.

SELYK MATTRESS INC.,

Defendant.

Case № 2:22-cv-06194-ODW (PVCx)

**ORDER GRANTING PLAINTIFFS’  
MOTION FOR DEFAULT  
JUDGMENT [22]**

**I. INTRODUCTION**

Plaintiffs Tempur Sealy International, Inc.; Tempur-Pedic Management, LLC; Tempur-Pedic North America, LLC; Tempur World, LLC; Dan-Foam APS; and Sealy Technology LLC (“Tempur Sealy”) move for entry of default judgment against Defendant Seltyk Mattress Inc., on Tempur Sealy’s Complaint for trademark infringement and counterfeiting. (Mot. Default J. (“Motion” or “Mot.”), ECF No. 22.) For the reasons that follow, the Court **GRANTS** Tempur Sealy’s Motion.

**II. BACKGROUND**

Tempur Sealy develops, manufactures, supplies, and sells premium mattresses, pillows, and other comfort products (“Tempur Sealy Products”) bearing trademarks owned by Tempur Sealy (“Tempur Sealy Marks”). (Compl. ¶¶ 12–18, ECF No. 1.)

1 Some of the Tempur Sealy Marks are word marks, like “TEMPUR-PEDIC,”  
2 “POSTUREPEDIC,” and “POSTUROPEDICO,” and other Marks are designs like the  
3 Stearns & Foster fleur-de-lis. (*Id.* ¶¶ 16–19.) Each year, Tempur Sealy spends  
4 millions of dollars advertising and promoting its products to establish the Tempur  
5 Sealy Marks in the minds of customers as synonymous with a source of high-quality  
6 bedding products. (*Id.* ¶ 20.) Tempur Sealy tightly controls authorized sales of  
7 Tempur Sealy Products to ensure this high quality and reputation. (*Id.* ¶¶ 25, 33, 35.)

8 Seltyk is not an authorized retail dealer of Tempur Sealy Products. (*Id.* ¶ 37.)  
9 In March 2022, Tempur Sealy learned that Seltyk was using the Tempur Sealy Marks  
10 online and on exterior signage at Seltyk’s retail location in Los Angeles, to advertise  
11 and sell Seltyk’s mattress products. (*Id.* ¶¶ 38–39.) Tempur Sealy also learned that  
12 Seltyk was selling goods with “TEMPUR-PEDIC” and “POSTURE-O-PEDIC” word  
13 marks and the fleur-de-lis design, each of which is identical or similar to Tempur  
14 Sealy Marks. (*Id.* ¶¶ 39–40.)

15 In March and May 2022, counsel for Tempur Sealy contacted Seltyk, notifying  
16 it of Tempur Sealy’s objections and demanding that Seltyk cease and desist  
17 advertising and selling the infringing and counterfeit goods. (*Id.* ¶¶ 42–43.) After  
18 receiving these cease-and-desist letters, Seltyk continued the unauthorized advertising  
19 and sales. (*Id.* ¶¶ 44, 48; Decl. Mark Riera iso Mot. (“Riera Decl.”) ¶ 16, Ex. E  
20 Image 2 (October 23, 2022 Seltyk Instagram post displaying Seltyk mattress with  
21 Tempur Sealy Marks), ECF No. 22-1.)

22 On August 31, 2022, Tempur Sealy filed this action against Seltyk, asserting  
23 federal and California state law claims for trademark infringement, trademark  
24 counterfeiting, unfair competition, false advertising, and trademark dilution. (Compl.  
25 ¶¶ 57–97.) Tempur Sealy served Seltyk with the Complaint, but Seltyk did not timely  
26 respond. (Proof of Service, ECF No. 14; Order Show Cause (“OSC”) Default, ECF  
27 No. 18.) Instead, counsel claiming to represent Seltyk contacted Tempur Sealy,  
28 acknowledged the Summons and Complaint, and requested an extension of time to

1 respond. (Riera Decl. ¶¶ 12–13, 22.) Tempur Sealy offered a 30-day extension. (*Id.*  
2 ¶ 14.) Seltyk’s purported counsel did not reply to that offer. (*Id.* ¶¶ 15, 20.)

3 After Seltyk’s time to respond to the Complaint elapsed, Tempur Sealy  
4 requested entry of Seltyk’s default. (Req. Default, ECF No. 19.) The Clerk entered  
5 Seltyk’s default, and on November 17, 2022, Tempur Sealy filed this Motion.  
6 (Default, ECF No. 20; Mot.)

### 7 **III. LEGAL STANDARD**

8 Federal Rule of Civil Procedure (“Rule”) 55(b) authorizes a district court to  
9 grant a default judgment after the Clerk enters default under Rule 55(a). However,  
10 before a court can enter a default judgment against a defendant, the plaintiff must  
11 satisfy the procedural requirements in Rule 54(c) and 55, and Central District Civil  
12 Local Rules 55-1 and 55-2. Even if these procedural requirements are satisfied, “[a]  
13 defendant’s default does not automatically entitle the plaintiff to a court-ordered  
14 judgment.” *PepsiCo, Inc., v. Cal. Sec. Cans*, 238 F. Supp. 2d 1172, 1174 (C.D. Cal.  
15 2002). Instead, “[t]he district court’s decision whether to enter a default judgment is a  
16 discretionary one.” *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980).

17 Generally, after the Clerk enters a default, the defendant’s liability is  
18 conclusively established, and the well-pleaded factual allegations in the plaintiff’s  
19 complaint “will be taken as true” except those pertaining to the amount of damages.  
20 *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917–18 (9th Cir. 1987) (per curiam)  
21 (quoting *Geddes v. United Fin. Grp.*, 559 F.2d 557, 560 (9th Cir. 1977)). The court  
22 need not make detailed findings of fact in the event of default, except as to damages.  
23 *See Adriana Int’l Corp. v. Thoeren*, 913 F.2d 1406, 1414 (9th Cir. 1990).

### 24 **IV. DISCUSSION**

25 Tempur Sealy satisfies the procedural requirements for default judgment and  
26 establishes that entry of default judgment against Seltyk is substantively appropriate.

1 **A. PROCEDURAL REQUIREMENTS**

2 Local Rule 55-1 requires that the movant establish: (1) when and against which  
3 party default was entered; (2) the pleading to which default was entered; (3) whether  
4 the defaulting party is a minor or incompetent person; (4) that the Servicemembers  
5 Civil Relief Act does not apply; and (5) that the defaulting party was properly served  
6 with notice, if required under Rule 55(b)(2). In turn, Rule 55(b)(2) requires written  
7 notice on the defaulting party if that party “has appeared personally or by a  
8 representative.”

9 Tempur Sealy meets these requirements. On October 27, 2022, the Clerk  
10 entered default against Selyk as to Tempur Sealy’s Complaint. (*See* Default.)  
11 Tempur Sealy’s counsel submits declaration testimony that Selyk is not an infant or  
12 incompetent person and that the Servicemembers Civil Relief Act does not apply.  
13 (Riera Decl. ¶ 27.) Finally, Selyk has not appeared in this case, so written notice of  
14 the Motion was not required. Nevertheless, Tempur Sealy served notice of this  
15 Motion on Selyk’s registered agent and also on Selyk’s purported counsel, in  
16 accordance with Rule 55(b)(2). (*Id.*) Thus, Tempur Sealy satisfies the procedural  
17 requirements.

18 **B. EITEL FACTORS**

19 In considering whether entry of default judgment is warranted, courts consider  
20 the “*Eitel* factors”: (1) the possibility of prejudice to plaintiff; (2) the merits of  
21 plaintiff’s substantive claim; (3) the sufficiency of the complaint; (4) the sum of  
22 money at stake; (5) the possibility of a material factual dispute; (6) whether the default  
23 was due to excusable neglect, and (7) the strong policy favoring decisions on the  
24 merits. *See Eitel v. McCool*, 782 F.2d 1470, 1471–72 (9th Cir. 1986). “Of all the *Eitel*  
25 factors, courts often consider the second and third factors to be the most important.”  
26 *Vietnam Reform Party v. Viet Tan-Vietnam Reform Party*, 416 F. Supp. 3d 948, 962  
27 (N.D. Cal. 2019) (internal quotation marks omitted). Accordingly, the Court considers  
28 these two factors first.

1           1.       *Second & Third Eitel Factors*

2           The second and third *Eitel* factors require a plaintiff to “state a claim on which  
3 the [plaintiff] may recover.” *PepsiCo*, 238 F. Supp. 2d at 1175 (alteration in original).  
4 Although well-pleaded allegations are taken as true, “claims which are legally  
5 insufficient[] are not established by default.” *Cripps v. Life Ins. Co. of N. Am.*,  
6 980 F.2d 1261, 1267 (9th Cir. 1992).

7           Tempur Sealy raises six claims under federal and California law, for trademark  
8 infringement, trademark counterfeiting, trademark dilution, unfair competition, and  
9 false advertising. These claims are all subject to the “same legal standards.” *Rearden*  
10 *LLC v. Rearden Com., Inc.*, 683 F.3d 1190, 1221 (9th Cir. 2012); *Cleary v. News*  
11 *Corp.*, 30 F.3d 1255, 1262–63 (9th Cir. 1994); *Phillip Morris USA Inc. v. Shalabi*,  
12 352 F. Supp. 2d 1067, 1072 (C.D. Cal. 2004); *Alixir Co. v. Qué Onda Beverage, Inc.*,  
13 No. 2:20-cv-08368-RGK (RAOx), 2021 WL 971057, at \*6 (C.D. Cal. Jan. 6, 2021).  
14 The Court therefore analyzes them together for the purposes of this Motion as a  
15 Lanham Act trademark infringement claim.

16           To state a claim for trademark infringement under the Lanham Act, a plaintiff  
17 must allege “(1) that it has a protectible ownership interest in the mark; and (2) that  
18 the defendant’s use of the mark is likely to cause consumer confusion.” *Dep’t of*  
19 *Parks & Recreation v. Bazaar Del Mundo Inc.*, 448 F.3d 1118, 1124 (9th Cir. 2006).

20           A plaintiff may establish a protectible ownership interest in a mark through  
21 registration, which constitutes prima facie evidence of (1) the validity of the mark,  
22 (2) the registrant’s ownership of the mark, and (3) the right to the mark’s exclusive  
23 use. 15 U.S.C. § 1115(a). Here, Tempur Sealy alleges that it has a protectable  
24 ownership interest in its Tempur Sealy Marks and submits registration numbers and  
25 trademark records for its protected Marks. (*See* Compl. ¶¶ 12–19; Exs. A–B  
26 (“Trademark Registrations”), ECF No. 3.) Accordingly, Tempur Sealy sufficiently  
27 alleges and establishes that it has a protectible ownership interest in the Tempur Sealy  
28 Marks.

1 Likelihood of confusion is a factual determination, normally assessed through  
2 multiple factors, but “in cases involving counterfeit marks,” the multi-factor  
3 assessment is “unnecessary . . . because counterfeit marks are inherently confusing.”  
4 *Shalabi*, 352 F. Supp. 2d at 1073. A mark is considered “counterfeit” if it is “identical  
5 with, or substantially indistinguishable from” the plaintiff’s trademark, regardless of  
6 whether the defendant knew of the plaintiff’s registration. 15 U.S.C.  
7 §§ 1116(d)(1)(B)(i), 1127. Here, Tempur Sealy alleges that Seltyk is using variations  
8 of Tempur Sealy’s Marks that are substantially indistinguishable from Tempur Sealy’s  
9 protected Marks to advertise and sell unauthorized Seltyk products, and also that  
10 Seltyk is selling counterfeit mattresses that affix and display the Tempur Sealy Marks.  
11 (Compl. ¶¶ 38–41.) Tempur Sealy submits dozens of images of Seltyk’s unauthorized  
12 use of Tempur Sealy Marks on advertising and mattress products, including the word  
13 marks “TEMPUR,” “TEMPUR-PEDIC,” and “POSTURE-O-PEDIC,” and the  
14 fleur-de-lis design. (*See id.*; Riera Decl Ex. E.) Accordingly, Tempur Sealy  
15 sufficiently alleges and establishes that Seltyk’s use of the Tempur Sealy Marks is  
16 likely to cause consumer confusion.

17 Tempur Sealy states claims for trademark infringement and counterfeiting on  
18 which it may recover, and therefore the second and third *Eitel* factors weigh in favor  
19 of entering default judgment against Seltyk.

## 20 2. *Remaining Eitel Factors*

21 On balance, the remaining *Eitel* factors also weigh in favor of entering default  
22 judgment against Seltyk. To begin, the first and fourth *Eitel* factors—possibility of  
23 prejudice and sum of money at stake—favor default judgment. Tempur Sealy would  
24 suffer prejudice absent entry of default judgment because it would have no recourse  
25 against Seltyk’s continuing infringement, and no remedy for the injuries sustained  
26 from Seltyk’s misconduct. Further, as discussed below in the damages analysis, the  
27 sum of money Tempur Sealy seeks is expressly authorized by statute and is one-eighth  
28 of the total amount available based on Tempur Sealy’s allegations.

1 The fifth and sixth factors—possibility of dispute and excusable neglect—also  
2 weigh in favor of default judgment. Tempur Sealy’s allegations are accepted as true  
3 on default, and Seltyk may not now “challenge the accuracy of the allegations in the  
4 complaint.” *Landstar Ranger, Inc. v. Parth Enters., Inc.*, 725 F. Supp. 2d 916, 922  
5 (C.D. Cal. 2010). Tempur Sealy has supported its claims with ample evidence and the  
6 Court’s review of the record reveals “no factual disputes . . . that preclude the entry of  
7 default judgment.” *Id.* Further, in October 2022, counsel claiming to represent Seltyk  
8 acknowledged the Summons and Complaint and requested an extension of time to  
9 respond, yet did not reply when Tempur Sealy offered an extension. Nor has Seltyk’s  
10 purported counsel appeared in this case in the intervening five months. Accordingly,  
11 nothing in the record suggests Seltyk’s failure to appear is a result of excusable  
12 neglect.

13 Finally, the seventh factor—policy favoring decisions on the merits—always  
14 weighs in a defaulting defendant’s favor. However, because Seltyk’s failure to appear  
15 in this action prevents the Court from reaching a decision on the merits, this factor  
16 does not prevent the Court from entering judgment by default. *See Duralar Techs.*  
17 *LLC v. Plasma Coating Techs., Inc.*, 848 F. App’x 252, 255 (9th Cir. 2021) (affirming  
18 entry of default judgment where all factors except the seventh weighed in the  
19 plaintiff’s favor).

20 In sum, the *Eitel* factors weigh in favor of entering default judgment against  
21 Seltyk on Tempur Sealy’s claims under federal and California law, for trademark  
22 infringement, trademark counterfeiting, trademark dilution, unfair competition, and  
23 false advertising.

#### 24 **C. REQUESTED RELIEF**

25 “A default judgment must not differ in kind from, or exceed in amount, what is  
26 demanded in the pleadings.” Fed. R. Civ. P. 54(c). Here, Tempur Sealy seeks a  
27 permanent injunction, statutory damages, costs of the action, and attorneys’ fees.  
28 (Mot. 14–17.) The relief Tempur Sealy seeks is consistent with the relief requested in

1 the Complaint. (Compl. ¶¶ 98–108.) However, for the following reasons, the Court  
2 awards Tempur Sealy some, but not all, of the relief it requests.

3 *I. Permanent Injunction*

4 Tempur Sealy requests that the Court permanently enjoin Seltyk’s ongoing  
5 infringement and counterfeiting. (Mot. 14; Compl. ¶ 98.)

6 “The Lanham Act gives the court ‘power to grant injunctions according to the  
7 rules of equity and upon such terms as the court may deem reasonable, to prevent the  
8 violation’ of a mark holder’s rights.” *PepsiCo, Inc.*, 238 F. Supp. 2d at 1177 (quoting  
9 15 U.S.C. § 1116(a)). A plaintiff seeking a permanent injunction must demonstrate  
10 that (1) it has suffered an irreparable injury, (2) for which a legal remedy is inadequate  
11 to compensate, (3) that the balance of hardships between the plaintiff and defendant  
12 supports an equitable remedy, and (4) the “public interest would not be disserved by a  
13 permanent injunction.” *Reno Air Racing Ass’n v. McCord*, 452 F.3d 1126, 1137 n.11  
14 (9th Cir. 2006) (quoting *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391  
15 (2006)). “The decision to grant or deny permanent injunctive relief is an act of  
16 equitable discretion by the district court . . . .” *eBay*, 547 U.S. at 391.

17 Tempur Sealy satisfies its burden for permanent injunctive relief. First, a  
18 plaintiff seeking an injunction to prevent trademark infringement is entitled to a  
19 rebuttable presumption of irreparable harm upon establishing a likelihood of success  
20 on the merits. 15 U.S.C. § 1116(a); *Cisco Sys., Inc. v. Wuhan Wolon Commc’n Tech.*  
21 *Co.*, No. 5:21-cv-04272-EJD, 2021 WL 4962661, at \*7 (N.D. Cal. July 23, 2021)  
22 (discussing the “recently enacted Trademark Modernization Act of 2020”). As  
23 discussed above, Tempur Sealy’s allegations and evidence establish a likelihood of  
24 success on the merits of its trademark-based claims. Tempur Sealy is thus entitled to a  
25 presumption of irreparable harm. 15 U.S.C. § 1116(a). In light of Seltyk’s default,  
26 this presumption is conclusive.

27 Second, the evidence indicates that Seltyk continued to use Tempur Sealy  
28 Marks even after Tempur Sealy threatened Seltyk with suit. Thus, absent an



1 injunction, Seltyk may continue to use Tempur Sealy Marks to advertise and sell  
2 infringing and counterfeit goods, and Tempur Sealy will continue to lose profits,  
3 reputation, and customer good will. Legal remedies are inadequate to compensate for  
4 these losses. *See Wecosign, Inc. v. IFG Holdings, Inc.*, 845 F. Supp. 2d 1072, 1083  
5 (C.D. Cal. 2012) (“[T]here is no adequate remedy at law for the injury caused by a  
6 defendant’s continuing infringement.” (quoting *Century 21 Real Est. Corp. v. Sandlin*,  
7 846 F.2d 1175, 1180 (9th Cir. 1988))). Third, for these same reasons, the balance of  
8 hardships weighs in Tempur Sealy’s favor, as the requested permanent injunction  
9 would not prevent Seltyk from conducting its business, provided the products Seltyk  
10 sells do not infringe the Tempur Sealy Marks. *Id.* at 1084. Finally, “[t]he public has  
11 an interest in avoiding confusion between two companies’ products.” *Internet*  
12 *Specialties W., Inc. v. Milon-DiGiorgio Enters., Inc.*, 559 F.3d 985, 993 n.5 (9th Cir.  
13 2009); *Chalon Adventures, Inc. v. Fullerton Lounge, Inc.*, No. 8:18-cv-01565-JLS  
14 (ADSx), 2019 WL 2896131, at \*5 (C.D. Cal. Mar. 7, 2019) (finding the public interest  
15 is damaged by a defendant’s unauthorized infringing use). Therefore, a permanent  
16 injunction would serve the public interest.

17 The Court thus finds it appropriate to permanently enjoin Seltyk from infringing  
18 and counterfeiting the Tempur Sealy Marks and Tempur Sealy Products, as detailed  
19 below.

## 20 2. *Statutory Damages*

21 Tempur Sealy seeks \$500,000 in statutory damages, “to recover from and  
22 further deter Seltyk’s unlawful actions.” (Mot. 15; Compl. ¶ 101.)

23 A plaintiff suing for trademark infringement is generally entitled to recover  
24 actual damages, the costs of the action, and the defendant’s profits. 15 U.S.C.  
25 § 1117(a). However, when a defendant has used a counterfeit mark, a plaintiff may  
26 elect to request statutory damages instead of actual damages. *Id.* § 1117(c).  
27 Section 1117(c) authorizes statutory damages between \$1,000 and \$200,000 per  
28 counterfeit mark per type of good. *Id.* § 1117(c)(1). Where the use of the counterfeit

1 mark was willful, section 1117(c) authorizes “not more than \$2,000,000 per  
2 counterfeit mark per type of good[.]” *Id.* § 1117(c)(2).

3 In the Complaint, Tempur Sealy sought statutory damages of “at least  
4 \$4,000,000” pursuant to 15 U.S.C. § 1117(c), as a result of Seltyk’s use of “at least  
5 two counterfeit marks.” (Compl. ¶ 101.) Through its Motion, Tempur Sealy seeks  
6 \$500,000, which is one-eighth of the initial sum requested, based on evidence of  
7 Seltyk’s “ongoing, willful counterfeiting” of Tempur Sealy Marks. (Mot. 15.)  
8 Tempur Sealy identifies “at least four registered Tempur Sealy Marks—  
9 TEMPUR-PEDIC, POSTUREPEDIC, POSTUR-O-PEDIC, and the . . . fleur-de-lis  
10 design [Seltyk used] on unauthorized or counterfeit Tempur Sealy Products.” (*Id.*;  
11 Compl. ¶¶ 16–19 (listing registered Tempur Sealy Marks), 38–41 (alleging Seltyk’s  
12 unauthorized use of certain Marks, supported by photographs).) Tempur Sealy also  
13 submits photographic evidence with its Motion demonstrating that Seltyk continued  
14 infringing Tempur Sealy’s Marks and selling counterfeit Tempur Sealy Products after  
15 receiving cease-and-desist letters and the Complaint in this action. (*See* Riera Decl.  
16 Ex. E (photographs taken by Tempur Sealy’s counsel and agents, of Seltyk’s online  
17 posts and retail locations with advertising and goods using Tempur Sealy Marks,  
18 including as late as October 23, 2022).) This evidence establishes that Seltyk’s  
19 continued use of the Tempur Sealy Marks is willful and authorizes the Court to award  
20 statutory damages up to the limits of § 1117(c)(2).

21 The sum Tempur Sealy seeks, \$500,000, is authorized by the statute and  
22 supported by the allegations and evidence. Accordingly, the Court finds the requested  
23 sum appropriate and **AWARDS** Tempur Sealy \$500,000 in statutory damages.

### 24 3. *Attorneys’ Fees & Costs*

25 Tempur Sealy seeks its costs and attorneys’ fees for prosecuting Seltyk’s  
26 unlawful actions. (Mot. 16–17; Compl. ¶¶ 106–07.)

27 A plaintiff that establishes a defendant’s trademark infringement is entitled to  
28 recover the costs of the action. 15 U.S.C. § 1117(a). Here, Tempur Sealy seeks

1 \$2,591.79 in costs. (Mot. 16.) It supports this request with declaration testimony  
2 from counsel and a breakdown of costs. (Reira Decl. ¶ 30, Ex. H at 74–75  
3 (\$2,441.02); Decl. Amy S. Cahill ¶ 4 (\$150.77), ECF No. 22-3.) These costs are  
4 recoverable under the statute and supported by evidence. Accordingly, the Court  
5 **AWARDS** Tempur Sealy \$2,591.79 in costs.

6 “[T]he Lanham Act allows an award of attorneys’ fees in ‘exceptional cases.’”  
7 *Nutrition Distrib. LLC v. IronMag Labs, LLC*, 978 F.3d 1068, 1081 (9th Cir. 2020)  
8 (citing 15 U.S.C. § 1117(a)). Such an award of attorneys’ fees is permitted but not  
9 mandated. *Id.* Whether a case is “exceptional” is determined in light of the totality of  
10 circumstances, considering several nonexclusive factors and using a preponderance of  
11 the evidence standard. *SunEarth, Inc. v. Sun Earth Solar Power Co.*, 839 F.3d 1179,  
12 1180–81 (9th Cir. 2016) (discussing *Octane Fitness, LLC v. ICON Health & Fitness,*  
13 *Inc.*, 572 U.S. 545, 554 (2014), and the “parallel and identical” “exceptional” standard  
14 in the Patent Act). “[A]n ‘exceptional’ case is simply one that stands out from others  
15 with respect to the substantive strength of a party’s litigating position . . . or the  
16 unreasonable manner in which the case was litigated.” *Id.* at 1180.

17 Tempur Sealy argues that “Selyk’s ongoing bad faith, unreasonable, and  
18 inequitable infringement of Tempur Sealy Marks and Products is exceptional,”  
19 (Mot. 17), but does not explain how a defendant’s continuing infringement makes a  
20 trademark infringement case “stand[] out from others,” *SunEarth*, 839 F.3d at 1180.  
21 Further, other than Selyk’s failure to appear and defend, litigation in this case has  
22 been straightforward and “run-of-the-mill,” *see Octane Fitness*, 572 U.S. at 554  
23 (quoting *Noxell Corp. v. Firehouse No. 1 Bar-B-Que Rest.*, 771 F.2d 521, 526  
24 (D.C. Cir. 1985)), with substantive filings limited to the initial Complaint and the  
25 instant Motion. Accordingly, Tempur Sealy fails to establish that this case is  
26 exceptional and an award of attorneys’ fees is therefore not appropriate.

27  
28

1 **V. CONCLUSION**

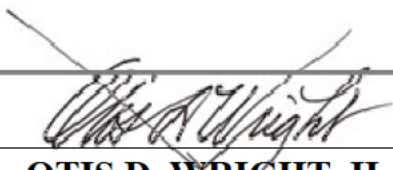
2 For the reasons discussed above, the Court **GRANTS** Tempur Sealy’s Motion  
3 for Entry of Default Judgment against Seltyk for trademark infringement, trademark  
4 counterfeiting, trademark dilution, unfair competition, and false advertising. (ECF  
5 No. 22.) The Court **AWARDS** Tempur Sealy **\$500,000** in statutory damages and  
6 **\$2,591.79** in costs. The Court **DENIES** Tempur Sealy’s request for attorneys’ fees.  
7 The Court **PERMANENTLY ENJOINS** Seltyk and its officers, agents, affiliates,  
8 employees, attorneys, and any other persons or entities working in concert with Seltyk  
9 regarding the actions for which Seltyk is liable from:

- 10 1. using the Tempur Sealy Marks or any other confusingly similar variants  
11 of the Tempur Sealy Marks in any manner;
- 12 2. promoting, selling, or offering for sale any Tempur Sealy Products or any  
13 other unauthorized, counterfeit, or confusingly similar variants of the  
14 Tempur Sealy Products; and
- 15 3. engaging in any actions or inactions likely to cause confusion in the  
16 minds of the public regarding the connection between Seltyk’s business  
17 or products, on one hand, and Tempur Sealy or the Tempur Sealy  
18 Products, on the other hand.

19 To the extent Tempur Sealy seeks additional injunctive relief, (*see, e.g.*,  
20 Proposed Entry Default J., ECF No. 23-1), the Court finds that Tempur Sealy fails to  
21 establish additional injunction terms are appropriate. The Court therefore **DENIES**  
22 any further injunctive relief.

23 **IT IS SO ORDERED.**

24  
25 April 25, 2023

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**OTIS D. WRIGHT, II**  
**UNITED STATES DISTRICT JUDGE**