

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

FEDERATION OF TELUGU ASSOCIATIONS OF SOUTHERN CALIFORNIA, a California Corporation	)	CV 14-1278 RSWL (ASx)
	)	
Plaintiff,	)	<b>ORDER Re: PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT AGAINST DEFENDANT TELUGU ASSOCIATION OF SOUTHERN CALIFORNIA [140]</b>
v.	)	
TELUGU ASSOCIATION OF SOUTHERN CALIFORNIA, a California corporation,	)	
	)	
Defendant.	)	
_____	)	

Now before this Court is Plaintiff Federation of Telugu Associations of Southern California's ("Plaintiff") Motion for Default Judgment against Defendant Telugu Association of Southern California [140]. In the present Motion, Plaintiff seeks entry of default judgment and requests entry of a permanent injunction against Defendant Telegu Association of Southern California ("Defendant" or "TASC").

1 I. BACKGROUND

2 A. Factual Background

3 Plaintiff is a California corporation, with its  
4 principal place of business in Upland, California.  
5 Second Am. Compl. ("SAC") ¶ 4, ECF No. 72. Defendant  
6 is a California corporation, with its principal place  
7 of business in Artesia, California. Id. at ¶ 5.  
8 Plaintiff is the owner of the following federally  
9 registered trademark and trade name "Telugu Association  
10 of Southern California," and is incorporated under this  
11 trade name. Id. at ¶ 7. Plaintiff has used this trade  
12 name in interstate commerce since December 31, 2002, in  
13 connection with 1) charitable services, namely,  
14 promoting public awareness of the Telugu language and  
15 culture, and 2) organizing and hosting events for  
16 cultural and educational purposes. Id. at ¶ 8.  
17 Plaintiff's members and officers reside throughout the  
18 United States. Id. at ¶ 9.

19 In February 2014, Defendant began using Plaintiff's  
20 trademark / trade name in connection with Defendant's  
21 services. Id. at ¶ 12. On March, 13, 2014, when the  
22 California Franchise Tax Board suspended Plaintiff's  
23 corporate standing for a period of about six months,  
24 Plaintiff changed its corporate name to "Federation of  
25 Telegu Associations of Southern California." Id.;  
26 Declaration of Mallik Banda ("Banda Decl.") ¶ 2, ECF  
27 No. 14. While Plaintiff was suspended, Defendant  
28 incorporated itself under Plaintiff's trademark / trade

1 name. SAC ¶ 12. However, during its corporate  
2 suspension, Plaintiff continued to use its trademark /  
3 trade name. Defendant's services consist of 1)  
4 charitable services, such as promoting public awareness  
5 of the Telegu language and culture, and 2) organizing  
6 and hosting events for cultural and educational  
7 purposes. See SAC Exs. 3-4.

8 **B. Procedural Background**

9 On June 23, 2014, Plaintiff filed its Complaint [1]  
10 for injunctive and monetary relief, alleging violations  
11 of the Lanham Act as well as unfair competition under  
12 the California Business and Professions Code against  
13 Defendants TASC and Nagesh Ankam. On July 7, 2014, the  
14 Complaint was served on Defendants [9]. On August 5,  
15 2014, Plaintiff requested that the clerk of court enter  
16 default against Defendant TASC [10]. On August 7,  
17 2014, the clerk entered default against TASC [11]. On  
18 October 15, 2014, Plaintiff filed a Motion for Default  
19 Judgement against TASC [14]. On October 15, 2014,  
20 Defendant TASC filed a Motion to Set Aside Default  
21 [15]. On February 10, 2015, the Court granted  
22 Defendant TASC's Motion to Set Aside Default, and thus  
23 denied as moot Plaintiff's Motion for Default Judgment  
24 [28].

25 On June 29, 2015, Plaintiff filed its Second  
26 Amended Complaint ("SAC") against Defendants [72]. On  
27 August 4, 2015, Wolf & Levine, LLP ("Defense Counsel")  
28 filed a Motion to Withdraw as Counsel for Defendant

1 Telugu Association of Southern California [93]. Upon a  
2 finding of good cause and a determination that Defense  
3 Counsel complied with the applicable Local Rules, this  
4 Court granted Defense Counsel's Motion to Withdraw  
5 [123]. In doing so, the Court ordered Defense Counsel  
6 to file proof of service, containing Defendant TASC's  
7 last known contact information, that the Court's Order  
8 [123] was properly served upon TASC. The Court further  
9 ordered TASC to obtain permanent counsel within thirty  
10 days of the Court's Order, and file proof of service as  
11 to its new counsel.

12 On December 3, 2015, this Court ordered Defendant  
13 TASC to show cause as to why it failed to comply with  
14 this Court's previous Order [137]. The Court advised  
15 and cautioned TASC that it had until December 15, 2015  
16 to provide the Court with proof of permanent counsel.  
17 TASC was advised that a failure to respond to this  
18 Order to Show Cause may lead to the imposition of  
19 sanctions, including placing TASC in default.

20 On November 04, 2015, the Court granted the  
21 parties' stipulation to Dismiss Defendant Nagesh Ankam  
22 [135], with only Defendant TASC (hereinafter  
23 "Defendant") remaining. On December 17, 2015, upon  
24 Defendant's failure to provide proof of permanent  
25 counsel, the Clerk entered default against Defendant  
26 [139]. Plaintiff now brings the instant Motion for  
27 Default Judgment [140].

28 /

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## II. DISCUSSION

### A. Legal Standard

Default judgment is within the discretion of the district court. Aldabe v. Aldabe, 616 F.2d 1089, 1092 (9th Cir. 1980); see Fed. R. Civ. P. 55. A party applying to the Court for default judgment must satisfy both procedural and substantive requirements.

Procedurally, the requirements set forth in Federal Rules of Civil Procedure Rules 55 and 56, and Local Rule 55-1 must be met. See Vogel v. Rite Aid Corp., 992 F. Supp. 2d 998, 1006 (C.D. Cal 2014). Local Rule 55-1 provides: "When an application is made to the Court for a default judgment, the application shall be accompanied by a declaration in compliance with Fed. R. Civ. P. 55(b)(1) and/or (2) and include the following: (a) When and against what party the default was entered; (b) The identification of the pleading to which default was entered; (c) Whether the defaulting party is an infant or incompetent person, and if so, whether that person is represented by a general guardian, committee, conservator or other representative; (d) That the Service Members Civil Relief Act, 50 U.S.C. App. § 521, does not apply; and (e) That notice has been served on the defaulting party, if required by Federal Rule of Civil Procedure 55(b)(2)." L.R. 55-1.

Substantively, the Ninth Circuit has directed that courts consider the following factors, referred to as

1 the Eitel factors in deciding whether to enter default  
2 judgment: "(1) the possibility of prejudice to  
3 plaintiff, (2) the merits of plaintiff's substantive  
4 claim, (3) the sufficiency of the complaint, (4) the  
5 sum of money at stake in the action, (5) the  
6 possibility of a dispute concerning the material facts,  
7 (6) whether defendant's default was the product of  
8 excusable neglect, and (7) the strong public policy  
9 favoring decisions on the merits." See Vogel, 992 F.  
10 Supp. 2d at 1005; see also Eitel v. McCool, 782 F.2d  
11 1470, 1471071 (9th Cir. 1986). Additionally, "[w]hen  
12 entry of judgment is sought against a party who has  
13 failed to plead or otherwise defend, a district court  
14 has an affirmative duty to look into its jurisdiction  
15 over both the subject matter and the parties." In re  
16 Tuli, 172 F.3d 707, 712 (9th Cir. 1999).

17 In analyzing these factors, the Court may base its  
18 judgment entirely upon the affidavits submitted by the  
19 parties. Davis v. Fendler, 650 F.2d 1154, 1161 (9th  
20 Cir. 1981). If the Court determines that the defendant  
21 is in default, "the factual allegations of the  
22 complaint, other than those relating to damages, are  
23 taken as true.'" Televideo Sys., Inc. v. Heidenthal,  
24 826 F.2d 915, 917-918 (9th Cir. 1987) (quoting Geddes  
25 v. United Fin. Group, 559 F.2d 557, 560 (9th Cir.  
26 1977)). Additionally, "[w]hen entry of judgment is  
27 sought against a party who has failed to plead or  
28 otherwise defend, a district court has an affirmative

1 duty to look into its jurisdiction over both the  
2 subject matter and the parties." In re Tuli, 172 F.3d  
3 707, 712 (9th Cir. 1999).

4 **B. Analysis**

5 Plaintiff seeks entry of default judgment against  
6 Defendant for failure to respond or otherwise defend  
7 itself in this matter. See generally Mot. for Default  
8 J. ("Mot."), ECF No. 140. For the reasons set forth  
9 below, the Court **GRANTS** Plaintiff's Motion.

10 1. Jurisdiction and Service of Process are Proper

11 In considering whether to enter default judgment  
12 against a party for failing to plead or otherwise  
13 defend himself in an action, a district court must  
14 first determine whether it has jurisdiction over the  
15 subject matter and the parties to the case. In re  
16 Tuli, 173 F.3d 707, 712 (9th Cir. 1999).

17 Generally, a defect in personal jurisdiction is a  
18 defense that must be asserted or waived by a party.  
19 Id. (citing Fed. R. Civ. P. 12(h)(1)). However, when a  
20 court is considering whether to enter default judgment,  
21 the court may dismiss the action *sua sponte* for lack of  
22 personal jurisdiction, for a "judgment entered without  
23 personal jurisdiction over the parties is void." Id.  
24 This court should find that service of process was  
25 proper, and the Court has jurisdiction over the parties  
26 and the subject matter in this action.

27 a. *Personal jurisdiction*

28 In states where no applicable federal statute

1 governs personal jurisdiction, that state's long-arm  
2 statute applies. See Panavision Int'l, L.P. v.  
3 Toeppen, 141 F.3d 1316, 1320 (9th Cir. 1998). The  
4 exercise of personal jurisdiction over a nonresident  
5 defendant requires the presence of two factors: (1)  
6 California's laws must provide a basis for exercising  
7 personal jurisdiction, and (2) the assertion of  
8 personal jurisdiction must comport with due process.  
9 Hirsch v. Blue Cross, Blue Shield of Kansas City, 800  
10 F.2d 1474, 1477 (9th Cir. 1986). California's long arm  
11 statute permits the exercise of personal jurisdiction  
12 to the fullest extent permitted by due process. See  
13 Cal. Civ. Proc. Code § 410.10; Panavision, 141 F.3d at  
14 1320. "Because California's long-arm jurisdictional  
15 statute is coextensive with federal due process  
16 requirements, the jurisdictional analyses under state  
17 law and federal due process are the same."  
18 Schwarzenegger v. Fred Martin Motor Co., 374 F.3d 797,  
19 800-01 (9th Cir. 2004). Thus only a due process  
20 analysis is required here.

21 Due process requires that a defendant have "certain  
22 minimum contacts with [the forum state] such that the  
23 maintenance of the suit does not offend traditional  
24 notions of fair play and substantial justice." Int'l  
25 Shoe Co. v. Washington, 326 U.S. 310, 316 (1945)  
26 (internal quotations marks omitted). Depending on the  
27 nature and scope of the defendant's contacts with the  
28 forum, jurisdiction may be general or specific to a



1 cause of action. Roth v. Garcia Marquez, 942 F.2d 617,  
2 620 (9th Cir. 1991). When a defendant's contacts with  
3 the forum state are "substantial" or "continuous and  
4 systematic," general jurisdiction may be exercised over  
5 that defendant for any cause of action, even if it is  
6 unrelated to the defendant's activities with the forum  
7 state. Schwarzeneggarm, 374 F.3d at 801-02; Data Disc,  
8 Inc. v. Sys. Tech. Assocs., 557 F.2d 1280, 1287 (9th  
9 Cir. 1977). This Court finds it has personal  
10 jurisdiction over all parties. Defendant is a  
11 California corporation with its principal place of  
12 business in Artesia, California, SAC ¶ 5, thus this  
13 Court has general jurisdiction over Defendant.

14 b. *Subject matter jurisdiction*

15 This Court finds it has subject matter jurisdiction  
16 over the matter, as Plaintiff's claims for trademark  
17 infringement, trade name infringement, and false  
18 designation of origin arise under the Lanham Act. See  
19 SAC, ECF No. 72; 15 U.S.C § 1125(a). This Court has  
20 pendent jurisdiction over Plaintiff's unfair  
21 competition claim pursuant to 28 U.S.C. section 1367.  
22 Furthermore, under 28 U.S.C. § 1338(a), this Court  
23 "shall have original jurisdiction of any civil action  
24 arising under any Act of Congress relating to ...  
25 trademarks." 28 U.S.C. § 1338(a). This court thus has  
26 original jurisdiction over this matter as the Court has  
27 jurisdiction of "any civil action asserting a claim of  
28 unfair competition when joined with a substantial and

1 related claim under the . . . trademark laws." 28  
2 U.S.C. § 1338(b).

3 c. *Service of process*

4 This Court finds Plaintiff has proffered the  
5 requisite Proofs of Service [1, 6, 9, 140]. The Proofs  
6 of Service show Defendant was properly served with the  
7 Summons, Complaint, Clerk's Entry of Default, and the  
8 present Motion, and thus service of process is complete  
9 and proper.

10 2. Plaintiff has Satisfied the Procedural  
11 Requirements for Default Judgment

12 This Court finds Plaintiff has met all of the  
13 procedural requirements for entry of default judgment.  
14 Plaintiff's application includes the identity of the  
15 party that default was entered against, Defendant  
16 Telegu Association of Southern California, and when  
17 default was entered against Defendant. Declaration of  
18 Michael Shimokaji ("Shimokaji Decl.") ¶ 2, ECF No. 140-  
19 1. Furthermore, Plaintiff's application identifies the  
20 pleading to which default was entered, the Second  
21 Amended Complaint. Id. As Defendant is a corporation,  
22 it is neither an infant or incompetent person, nor  
23 subject to the Servicemembers Civil Relief Act. See  
24 Shimokaji Decl. ¶¶ 3-4. Additionally, Plaintiff has  
25 sufficiently established the seven Eitel factors, thus  
26 satisfying the substantive requirements for entry of  
27 default judgment.

28 3. Plaintiff has Satisfied the Substantive

1           Requirements for Default Judgment

2           a. *Risk of prejudice to Plaintiff*

3           The first Eitel factor "considers whether plaintiff  
4 will suffer prejudice if default judgment is not  
5 entered." Tate v. Molina, 2015 U.S. Dist. LEXIS 3607  
6 (C.D. Cal. Jan. 9, 2015). This Court finds Plaintiff  
7 would be prejudiced if default judgment was not  
8 entered.

9           Currently, Defendant is not represented through  
10 licensed counsel. See Declaration of Sarah R. Wolk  
11 ("Wolk Decl.") ¶ 2, ECF No. 93. Defendant is a  
12 corporation and cannot appear *pro se*. See Rowland v.  
13 California Men's Colony, Unit II Men's Advisory  
14 Council, 506 U.S. 194, 202 (1993). Since Defense  
15 Counsel withdrew their representation of Defendant, and  
16 Defendant subsequently failed to provide the Court with  
17 proof of new permanent counsel, this Court struck  
18 Defendant's Answer to Plaintiff's SAC and placed  
19 Defendant in default [138]. Since Defendant was placed  
20 in default on December 17, 2015 [139], Defendant has  
21 neither obtained permanent counsel, nor responded to  
22 Plaintiff's Motion for Default Judgment in any way.

23           Plaintiff argues that in the absence of a default  
24 judgment awarding injunctive relief, Defendant will be  
25 free to continue its infringement and acts of unfair  
26 competition. Mot. 2:24-25. Further, as Defendant  
27 cannot yet appear in this litigation due to lack of  
28 representation, Plaintiff would be denied its right to

1 judicial resolution of its claim if default judgment  
2 were not entered. Electra Entm't Grp. Inc. v.  
3 Crawford, 226 F.R.D. 388, 392 (C.D. Cal. 2005) (holding  
4 "plaintiff would suffer prejudice if default judgment  
5 is not entered because plaintiff 'would be denied the  
6 right to judicial resolution of the claims presented,  
7 and would be without other recourse for recovery.'").  
8 Accordingly, this factor weighs in favor of entry of  
9 default judgment.

10           b. *The merits of Plaintiff's substantive*  
11                 *claims and sufficiency of the Complaint.*

12           The second and third Eitel factors consider the  
13 merits of Plaintiff's substantive claims and the  
14 sufficiency of the complaint. "Under an [Eitel]  
15 analysis, [these factors] are often analyzed together."  
16 Tate, 2015 U.S. Dist. LEXIS 3607 at \*5 (quoting Dr. JKL  
17 Ltd. v. HPC IT Educ. Ctr., 749 F.Supp.2d 1038, 1048  
18 (N.D. Cal. 2010)). "These two factors require a  
19 plaintiff to 'state a claim on which the [plaintiff]  
20 may recover." Id. (quoting Danning v. Lavine, 572 F.2d  
21 1386, 1388 (9th Cir. 1978)).

22           i. *Plaintiff has asserted a meritorious*  
23                 *claim for Federal Trademark*  
24                 *Infringement.*

25           Plaintiff's first claim against Defendant alleges  
26 federal trademark infringement in violation of the  
27 Lanham Act, 15 U.S.C. 1125(a). Mot. 1:27. To prevail  
28 on such a claim, Plaintiff must establish that the

1 "trademark infringer's use of [its] mark creates a  
2 likelihood that the consuming public will be confused  
3 as to who makes the product." Jada Toys, Inc. v.  
4 Mattel, Inc., 518 F.3d 628, 632 (9th Cir. 2008).

5  
6  
7 In order to prevail on a suit under § 1125(a) of  
8 the Lanham Act, a plaintiff must prove two basic  
9 elements: (1) it has a valid, protectable trademark or  
10 trade name, and (2) [the defendant's] use of the mark  
11 is likely to cause confusion. Southern Ca. Darts Ass'n  
12 v. Zaffina, 762 F.3d 921, 929 (9th Cir. 2014) (citing  
13 Applied Info. Sciences Corp. v. eBay, Inc., 511 F.3d  
14 966, 969 (9th Cir. 2007).

15 1. *Whether the Trademark / Trade Name*  
16 *is Valid and Protectable*

17 In regards to the first element, it is comprised of  
18 two sub-parts: the mark's protectability and the  
19 plaintiff's ownership of the mark. So. Ca. Darts, 762  
20 F.3d. at 929. Whether a mark is protectable depends on  
21 its degree of "distinctiveness." Id. There are five  
22 traditional categories of distinctiveness: (1) generic,  
23 (2) descriptive, (3) suggestive, (4) arbitrary, or  
24 (5) fanciful. Id. (citing Two Pesos, Inc. v. Taco  
25 Cabana, Inc., 505 U.S. 763, 768 (1992)). Furthermore,  
26 descriptive marks, such as Plaintiff's mark here,  
27 become protectable if they acquire a "secondary  
28 meaning," by becoming distinctive "as used on or in

1 connection with the applicant's goods in commerce."  
2 Id.; 15 U.S.C. § 1052(f). Whether a secondary meaning  
3 exists requires the consideration of several factors:  
4 (1) whether consumers associate the product with the  
5 trademark owner, (2) the extent of advertisement by the  
6 trademark owner, (3) the length of time of use by the  
7 trademark owner, and (4) the owner's exclusive use of  
8 the trademark. Japan Telecom v. Japan Telecom, 287  
9 F.3d 866, 873 (9th Cir. 2002).

10 Here, this Court finds Plaintiff's trademark /  
11 trade name is valid and protectable. Plaintiff is the  
12 sole owner of the trademark and trade name, registered  
13 as federal trademark No. 4,634,567 on November 4, 2014.  
14 SAC ¶ 7; see SAC Ex. 1. Plaintiff has advertised and  
15 used its trademark/trade name since at least 2002.  
16 Mot. 4:15-16; SAC ¶ 8. Plaintiff incorporated itself  
17 about thirty years before Defendant incorporated itself  
18 under Plaintiff's trademark/trade name. Mot. 4:8-9;  
19 SAC ¶ 4, 5. Plaintiff has continuously used  
20 Plaintiff's trademark and has never abandoned it. Mot.  
21 4:9-11; SAC ¶ 7-8, 13; Banda Decl. ¶ 2, ECF No. 14.  
22 Plaintiff has never consented to Defendant's use of  
23 Plaintiff's trademark. SAC ¶ 13-14, 17-18. Until  
24 Defendant's use of Plaintiff's trademark/trade name,  
25 Plaintiff believes it was the exclusive user of the  
26 trademark/trade name throughout the United States.  
27 Mot. 4:22-24; SAC ¶ 7. Furthermore, under California  
28 Business and Professions Code section 14415, a

1 presumption has existed since 1983 that Plaintiff has  
2 the exclusive right to use Plaintiff's trademark/trade  
3 name. SAC ¶ 13. Based on the analysis of the factors  
4 above, this Court finds Plaintiff's trademark / trade  
5 name has a secondary meaning and is thus protectable.

6 Additionally, "proof of exact copying, without  
7 opposing proof, can by itself establish secondary  
8 meaning." So. Ca. Darts 762 F.3d at 929. Here,  
9 Defendant has been using Plaintiff's trademark / trade  
10 name: 1) without variation of the mark (exact copying),  
11 2) in the same marketing channel as Plaintiff - a  
12 website, and 3) for the same services Plaintiff offers  
13 - charitable services to promote the Telegu language  
14 and culture. Mot. 4:25-28; SAC ¶ 12; Banda Decl. ¶ 6.  
15 Thus for this additional reason, Plaintiff has shown  
16 that Plaintiff's trademark/trade name has acquired a  
17 secondary meaning and, accordingly, is protectable.

18 *2. Whether Defendant's Use is Likely*  
19 *to Cause Confusion*

20 In regards to the second element, Plaintiff must  
21 show that Defendant's infringing use would likely cause  
22 consumer confusion. Southern Ca. Darts Ass'n, 762 F.3d  
23 at 929. Generally, courts apply a "likelihood of  
24 confusion" test that asks whether use of the  
25 plaintiff's trademark by the defendant is "likely to  
26 cause confusion or to cause mistake, or to deceive as  
27 to the affiliation, connection, or association" of the  
28 two products. Mattel, Inc. v. Walking Mountain Prods.,

1 353 F.3d 792, 806-07 (9th Cir. 2003).

2 The factors assessed in determining a "likelihood  
3 of confusion" are: (1) the strength of the mark; (2)  
4 proximity of the goods; (3) similarity of the marks;  
5 (4) evidence of actual confusion; (5) marketing  
6 channels used; (6) type of goods and the degrees of  
7 care likely to be exercised by the purchaser; (7)  
8 defendant's intent in selecting the mark; and (8)  
9 likelihood of expansion of the product lines. AMF Inc.  
10 v. Sleekcraft Boats, 599 F.2d 341, 348-49 (9th Cir.  
11 1979), abrogated in part on other grounds by Mattel  
12 Inc. v. Walking Mountain Prods., 353 F.3d 792, 810 n.  
13 19 (9th Cir. 2003). While courts analyze each of the  
14 eight factors, "[t]he test is a fluid one and the  
15 plaintiff need not satisfy every factor, provided that  
16 strong showings are made with respect to some of them."  
17 Survivor Media, Inc. v. Survivor Prods., 406 F.3d 625,  
18 631 (9th Cir. 2005). The importance of any one factor  
19 will vary case by case, and a court may reach a  
20 conclusion of confusion by only considering a subset of  
21 the factors. Brookfield Commc'ns, Inc. v. West Coast  
22 Entm't Corp., 174 F.3d 1036, 1054 (9th Cir. 1999).

23 Here, the Court finds Plaintiff has made a "strong  
24 showing" with respect to six of the eight Sleekcraft  
25 factors. Regarding the first factor, Plaintiff shows  
26 it's trademark/trade name is strong. Plaintiff has  
27 continuously used, since its incorporation in 1983 to  
28 present, the trademark/trade name - Telegu Association



1 of Southern California, and has never abandoned it or  
2 shown an intention to abandon it. Banda Decl. ¶ 2.  
3 Plaintiff has advertised and used its trademark/trade  
4 name since at least 2002, by way of plaintiff's website  
5 and advertising fliers. Mot. 4:15-17; SAC ¶ 8; Banda  
6 Decl. ¶ 3. Plaintiff has promoted itself and its  
7 services throughout different regions of the United  
8 States, including via the Telegu Association of North  
9 America ("TANA"), a national organization addressing  
10 the needs of the Telegu community. SAC ¶ 10.  
11 Furthermore, Plaintiff argues that since 1983,  
12 Plaintiff's membership has increased by over forty  
13 percent to date, as a result of Plaintiff's  
14 advertisement and use of its trademark/trade name.  
15 Mot. 4:17-19; Banda Decl. ¶ 3.

16       Regarding the second factor, the proximity of  
17 services, this Court finds Plaintiff shows such  
18 proximity exists here. Defendant provides charitable  
19 services, namely, promoting public awareness of the  
20 Telegu language and culture, and organizing and hosting  
21 events for cultural and educational purposes. SAC ¶  
22 12. Plaintiff also provides these types of services.  
23 Id. at ¶ 8. This Court finds Defendant's use of  
24 Plaintiff's trademark / trade name would likely cause  
25 consumers confusion between Defendant's website and  
26 services and Plaintiff's.

27       The third Sleekcraft factor considers whether the  
28 marks are identical. Here, the Court finds the marks

1 are identical. Since about February 2014, Defendant  
2 has been using Plaintiff's trademark/trade name,  
3 without variation of the mark. Banda Decl. ¶ 6.  
4 Defendant's website copies the "look and feel" of  
5 Plaintiff's website. SAC at ¶ 12; See SAC Exs. 6, 17,  
6 40. Defendant appears to have copied Plaintiff's  
7 trademark/trade name. Furthermore, Defendant uses an  
8 identical trade name on its website's banner. Id. at  
9 ¶¶ 12, 15, 18; Banda Decl. ¶ 7. Defendant's website  
10 also uses graphics in its banner that are identical to  
11 Plaintiff's website banner. Mot. 5:11-12.

12 In regards to the fourth Sleekcraft factor, the  
13 Court finds that actual confusion has occurred.  
14 Plaintiff claims, and Defendant fails to refute, that  
15 "[a]bout 50 members of [P]laintiff's organization have  
16 reportedly gone to [D]efendant's website, believing the  
17 website to be that of P[l]aintiff." Banda Decl. ¶ 10.  
18 The fifth Sleekcraft factor considers the marketing  
19 channels used. This Court finds that both Plaintiff  
20 and Defendant use the same marketing channels, i.e.  
21 websites, to promote their services to the Telegu  
22 community. SAC ¶¶ 10, 12.

23 The seventh Sleekcraft factor addresses the  
24 defendant's intent in selecting the mark. This Court  
25 finds Defendant was aware of Plaintiff's trademark /  
26 trade name and nonetheless intentionally used  
27 Plaintiff's trademark/trade name. Defendant  
28 organization's President was formerly the President of

1 Plaintiff organization, during the year immediately  
2 preceding Defendant's founding in February 2014. Mot.  
3 5:1-3; Banda Decl. ¶ 8. This indicates that Defendant  
4 was well aware of Plaintiff's trademark/trade name.  
5 Mot. 5:3-4. Plaintiff alleges that Defendant was aware  
6 of Plaintiff's website. Id. at 5:4-5. Additionally,  
7 Defendant amended its articles of incorporation to make  
8 Defendant's corporate name identical (not just similar)  
9 to Plaintiff's trademark/trade name, which further  
10 indicates Defendant's improper intent to benefit from  
11 its infringing use of Plaintiff's trademark/trade name.  
12 See SAC Ex. 11.

13 This Court finds Plaintiff has made a strong  
14 showing on six of the eight Sleekcraft factors, and  
15 accordingly has asserted a meritorious claim for  
16 federal trademark infringement. Plaintiff is likely to  
17 succeed on the merits of this claim.

18 *ii. Plaintiff has asserted a meritorious*  
19 *claim for Common Law Trade Name*  
20 *Infringement.*

21 Plaintiff brings a common law trade name  
22 infringement claim against Defendant, pursuant to 15  
23 U.S.C. § 1125(a). Mot. 1:28. To prevail on its common  
24 law trade name infringement claim, Plaintiff must show  
25 that (1) it has a valid, protectable trademark or trade  
26 name, and (2) Defendant's use of the mark is likely to  
27 cause confusion. Applied Info. Scis. Corp. v. eBay,  
28 Inc., 511 F.3d 966, 969 (9th Cir. 2007). "As a

1 practical matter, courts are rarely called upon to  
2 distinguish between trade names, trademarks, and  
3 service marks. Trade names often function as  
4 trademarks or service marks as well." Accuride Int'l  
5 v. Accuride Corp., 871 F.2d 1531, 1534-35 (9th Cir.  
6 1989). There are three ways in which Plaintiff can  
7 establish it has a protectable interest: (1) it has a  
8 federally registered trademark in goods or services;  
9 (2) its mark is descriptive but has acquired a  
10 secondary meaning in the market; or (3) it has a  
11 suggestive mark, which is inherently distinctive and  
12 protectable. Id. at 970. Registration of a mark "on  
13 the Principal Register in the Patent and Trademark  
14 Office constitutes prima facie evidence of the validity  
15 of the registered mark and of [the registrant's]  
16 exclusive right to use the mark on the goods and  
17 services specified in the registration." Brookfield  
18 Commc'ns, Inc., 174 F.3d at 1047.

19 Here, Plaintiff has registered the trade name  
20 "TELEGU ASSOCIATION OF SOUTHERN CALIFORNIA" with the  
21 United States Patent and Trademark Office. See SAC.  
22 Ex. 1, ECF No. 72-1. Thus, Plaintiff has made a prima  
23 facie showing that it holds a valid, protectable  
24 interest in the use of the trade name "TELEGU  
25 ASSOCIATION OF SOUTHERN CALIFORNIA," in connection with  
26 organizing and hosting events for cultural and  
27 educational purposes. Id. Thus, this Court finds  
28 Plaintiff is likely to succeed on the merits of this

1 claim.

2           iii.       *Plaintiff has asserted a*  
3                               *meritorious claim for False*  
4                               *Designation of Origin and Common*  
5                               *Law Unfair Competition.*

6           The elements to establish the claims of false  
7 designation of origin, unfair competition, and  
8 trademark infringement are "identical." New West Corp.  
9 v. NYM Co., 595 F.2d 1194, 1201 (9th Cir. 1979). Thus,  
10 as this Court finds Plaintiff has asserted a  
11 meritorious claim for trademark infringement, this  
12 Court similarly finds Plaintiff is likely to succeed on  
13 the merits of its false designation of origin claim and  
14 its common law unfair competition claim.

15           iv. *Plaintiff has asserted a meritorious*  
16                               *claim for California Statutory Unfair*  
17                               *Competition.*

18           California Business and Professions Code § 17200  
19 defines unfair competition as "any unlawful, unfair or  
20 fraudulent business act or practice and unfair,  
21 deceptive, untrue or misleading advertising." BPC §  
22 17200. The Ninth Circuit "has consistently held that  
23 state common law claims of unfair competition and  
24 actions pursuant to California Business and Professions  
25 Code § 17200 are 'substantially congruent' to claims  
26 made under the Lanham Act." Shingle Springs Band of  
27 Miwok Indians v. Caballero, 630 Fed. Appx. 708, 711 fn  
28 2 (9th Cir. 2015); See also Jada Toys, Inc. v. Mattel,

1 Inc., 518 F.3d 628, 632 (9th Cir. 2008) (finding that  
2 California state law trademark infringement claims are  
3 subject to same test as federal claims under the Lanham  
4 Act). As this Court finds Plaintiff has asserted a  
5 meritorious claim for trademark infringement, this  
6 Court similarly finds Plaintiff has established its  
7 claim for unfair competition under California Business  
8 and Professions Code § 17200.

9 In sum, as this Court finds Plaintiff has  
10 sufficiently alleged all of its claims in its  
11 Complaint, and Plaintiff is likely to succeed on the  
12 merits of its claims, this Court finds the second and  
13 third Eitel factors weigh in favor of default judgment.

14 c. *The sum of money at stake in the action.*

15 "Under the fourth Eitel factor, 'the court must  
16 consider the amount of money at stake in relation to  
17 the seriousness of Defendant's conduct.'" Tate, 2015  
18 U.S. Dist. LEXIS 3607 at \*10 (quoting PepsiCo, Inc. v.  
19 California Sec. Cans, 238 F.Supp.2d 1172, 1176 (C.D.  
20 Cal. 2002)).

21 Under the Lanham Act, the Court has the power to  
22 grant injunctions according to the rules of equity, and  
23 on such terms as the court deems reasonable, to prevent  
24 the violation of a mark holder's rights. Truong, 2007  
25 WL 1545173 at \*19; See also 15 U.S.C. § 1116(a). A  
26 plaintiff is not entitled to an injunction as a matter  
27 of course, but where a mark holder demonstrates ongoing  
28 infringement of its marks, an injunction is

1 appropriate. Truong, 2007 WL 1545173 at \*19.

2 "Injunctive relief is the remedy of choice for  
3 trademark infringement and unfair competition cases,  
4 since there is no adequate remedy at law for the injury  
5 caused by a defendant's continuing infringement."

6 Century 21 Real Estate Corp. v. Sandlin, 846 F.2d 1175,  
7 1180 (9th Cir. 1988).

8 Here, Plaintiff has abandoned its claim for damages  
9 and instead seeks a permanent injunction against  
10 Defendant. Mot. 8:13-9:2. Plaintiff seeks to enjoin  
11 Defendant, its officers, directors, agents, employees,  
12 representatives, and all persons acting in concert or  
13 privity with any of them from: (1) Using in any manner  
14 Plaintiff's trademark/trade name or any other names or  
15 marks that so resemble Plaintiff's trademark / trade  
16 name as to be likely to cause confusion, deception or  
17 mistake; and (2) Committing or contributing to any acts  
18 calculated to cause consumers to believe that any  
19 services that are not Plaintiff's are those provided  
20 under the control or supervision of Plaintiff, or are  
21 sponsored or approved or connected with, guaranteed by,  
22 or produced under the control of supervision of  
23 Plaintiff. Id. at 9:1-12.

24 As Plaintiff has established that Defendant's use  
25 of Defendant's website is likely to cause confusion,  
26 this Court enters a permanent injunction against  
27 Defendant as requested by Plaintiff. Without entry of  
28 a permanent injunction, Plaintiff will be exposed to

1 the risk of continuing irreparable harm. See PepsiCo,  
2 238 F.Supp.2d at 1177 (finding this Eitel favor weighs  
3 in favor of granting default judgment when a Plaintiff  
4 is not seeking monetary damages, but rather injunctive  
5 relief, against Defendant's continued infringing use of  
6 their trademarks). This Court finds this factor weighs  
7 in favor of default judgment, and enters a permanent  
8 injunction as requested.

9 d. *The possibility of a dispute concerning*  
10 *the material facts.*

11 This Court finds it is not clear there would be any  
12 genuine dispute of material fact in the present case,  
13 as Defendant has not obtained replacement counsel or  
14 properly answered Plaintiff's SAC or present Motion.  
15 "Upon entry of default, the well-pleaded allegations in  
16 the complaint are taken as true, except those relating  
17 to damages." Tate, 2015 U.S. Dist. LEXIS 3607 at \*12  
18 (citing TeleVideo Sys., Inc. v. Heidenthal, 826 F.2d  
19 915, 917-918 (9th Cir. 1987)). "In addition, '[t]he  
20 district court is not required to make detailed  
21 findings of fact.'" Id. (citing Fair Housing of Marin  
22 v. Combs, 285 F.3d 899, 908 (9th Cir. 2002)). In Tate,  
23 the district court found: "Since defendant never  
24 answered or otherwise appeared in this action, it is  
25 unclear whether there would be any genuine dispute of  
26 material facts." Id. As in Tate, this Court similarly  
27 finds no impediment to entry of default judgment  
28 against Defendant.



1 e. *Whether Defendant's default was the*  
2 *product of excusable neglect.*

3 "Excusable neglect is an equitable concept that  
4 takes account of factors such as 'prejudice . . . , the  
5 length of the delay and its potential impact on  
6 judicial proceedings, the reason for the delay,  
7 including whether it was within the reasonable control  
8 of the movant, and whether the movant acted in good  
9 faith.'" Tate, 2015 U.S. Dist. LEXIS 3607 at \*12  
10 (quoting Pioneer Inv. Servs. Co. v. Brunswick Assocs.  
11 Ltd. Partnership, 507 U.S. 380, 395 (1993)). As  
12 Defendant has not responded or otherwise obtained  
13 replacement counsel in this action, there is no  
14 evidence before this Court that Defendant's default is  
15 the product of excusable neglect. Such failure to  
16 respond, obtain replacement counsel, and/or appear  
17 favors default judgment.

18 f. *The strong public policy favoring*  
19 *decisions on the merits.*

20 Although there is a strong policy underlying the  
21 Federal Rules of Civil Procedure, which favors  
22 decisions on the merits "whenever reasonably possible,"  
23 Tate, 2015 U.S. Dist. LEXIS 3607 at \*13 (quoting Eitel,  
24 782 F.2d at 1427), "'this preference, standing alone,  
25 is not dispositive.'" Id. (quoting Kloeppling v.  
26 Fireman's Fund, 1996 U.S. Dist. LEXIS 1786 (N.D. Cal.  
27 1996)). In deciding to grant default judgment, the  
28 Tate court noted: "Defendant's failure to answer the

1 Complaint makes a decision on the merits impractical,  
2 if not impossible." Id. (citing PepsiCo, Inc. v.  
3 California Sec. Cans, 238 F.Supp.2d 1172, 1177 (C.D.  
4 Cal. 2002)). "Under Fed. R. Civ. P. 55(b), termination  
5 of a case before hearing the merits is allowed whenever  
6 a defendant fails to defend an action." Id.  
7 Furthermore, because Defendant participated in this  
8 case before abandoning their defense, this factor  
9 weighs in favor of entering a default judgment against  
10 Defendant. See Stanley Black & Decker, Inc. v. D&L  
11 Elite Investments, LLC, 2014 WL 3738327 at \*14 (N.D.  
12 Cal. 2014).

13 In the present case, Defendant has similarly made  
14 it impractical to decide the matter on the merits. In  
15 fact, no adjudication of the substantive claims can  
16 occur because Defendant has not obtained proper  
17 replacement counsel, in spite of this Court's order to  
18 do so. Because all Eitel factors weigh in favor of  
19 default judgment, this Court **GRANTS** Plaintiff's Motion  
20 for Default Judgment [140] against Defendant, and  
21 accordingly permanently enjoins Defendant from further  
22 infringement of Plaintiffs' trademark / trade name.

23 //

24 //

25 //

26 //

27 //

28 //

