

United States District Court  
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

	)	Case No. 12-5030 SC
	)	
DISNEY ENTERPRISES, INC., DC	)	ORDER GRANTING APPLICATION FOR
COMICS, and SANRIO, INC.,	)	<u>DEFAULT JUDGMENT</u>
	)	
Plaintiffs	)	
	)	
v.	)	
	)	
VUONG TRAN a.k.a. VUONG NGUYEN	)	
a.k.a. RICKY TRAN a.k.a. RICKY	)	
VUONG, an individual and d/b/a	)	
www.norcaljumper.com, JOEY	)	
NGUYEN a.k.a. DUONG NGUYEN, and	)	
DOES 1-10, inclusive,	)	
	)	
Defendants.	)	

**I. INTRODUCTION**

Now before the Court is Plaintiffs Disney Enterprises, Inc., DC Comics, and Sanrio, Inc.'s (collectively "Plaintiffs") motion for entry of default judgment against Defendant Joey Nguyen a.k.a. Dung Nguyen a.k.a. Duong Nguyen ("Nguyen" or "Defendant"). ECF No. 19 ("Mot."). For the reasons stated below, the Court GRANTS Plaintiffs' motion.

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1 **II. BACKGROUND**

2 Plaintiffs are companies that own the rights to a wide variety  
3 of well-known copyrighted and trademarked designs.<sup>1</sup> Compl. ¶¶ 3-4.  
4 Defendant owns a business that manufactures, imports, distributes,  
5 rents, and sells goods -- mainly inflatable play areas ("jumpers")  
6 for children's parties and jumper accessories -- featuring an array  
7 of Plaintiffs' copyrighted and trademarked designs.<sup>2</sup> Compl. ¶ 1.  
8 The designs that Plaintiffs allege to have been infringed are:  
9 Mickey Mouse, Minnie Mouse; Donald Duck; Daisy Duck; Pluto; Chip  
10 'N' Dale; Tinker Bell; various characters from the motion pictures  
11 Toy Story 3, Pirates of the Caribbean, High School Musical, The  
12 Little Mermaid, and Hannah Montana; Batman; Superman; Wonder Woman;  
13 Hello Kitty; KeroKeroKero; My Melody; and Badtz Maru  
14 (collectively the "Designs"). Mot. at 18. All of the Designs are  
15 registered under federal copyright and trademark law. See id.

16 Plaintiffs are the exclusive licensors of the Designs, and  
17 they have not granted Defendant any license or authorization to  
18 make any sort of use of the Designs. Compl. ¶¶ 1, 15. However,  
19 according to Plaintiffs' allegations, Defendant has (among other  
20 things) reproduced, sold, rented, and otherwise exploited the  
21 Designs in order to promote their own business. Plaintiffs  
22 therefore sued Defendant in this Court on September 27, 2012,  
23 asserting claims for copyright infringement, trademark

24 \_\_\_\_\_  
25 <sup>1</sup> Full descriptions of the material at issue in this case, too  
26 numerous to list in this Order, appear in Plaintiffs' complaint,  
ECF No. 1 ("Compl."), at paragraphs 5 through 7 and in exhibits A  
through F.

27 <sup>2</sup> Also named in the complaint and listed in the caption is Vuong  
28 Tran and his aliases. Plaintiffs submitted a notice of his  
bankruptcy filing on January 2, 2013, ECF No. 13, and in their  
motion seek entry of default judgment only against Defendant.

1 infringement, unfair competition, trademark dilution, and  
2 declaratory relief. See Compl. ¶¶ 13-47. Defendant did not answer  
3 the complaint or otherwise appear in this action. Plaintiffs now  
4 ask the Court to enter default judgment against Defendant solely as  
5 to the copyright infringement claims, to award both statutory  
6 damages under the Copyright Act and post-judgment interest, and to  
7 enter an injunction preventing Defendant from further infringing  
8 any of Plaintiffs' copyrights.

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10 **III. LEGAL STANDARD**

11 After entry of default, the Court may enter a default  
12 judgment. Fed. R. Civ. P. 55(b)(2). Its decision whether to do  
13 so, while "discretionary," Aldabe v. Aldabe, 616 F.2d 1089, 1092  
14 (9th Cir. 1980), is guided by several factors. As a preliminary  
15 matter, the Court must "assess the adequacy of the service of  
16 process on the party against whom default judgment is requested."  
17 Bd. of Trs. of N. Cal. Sheet Metal Workers v. Peters, No. C-00-0395  
18 VRW, 2000 U.S. Dist. LEXIS 19065, at \*2 (N.D. Cal. Jan. 2, 2001).  
19 If the Court determines that service was sufficient, it should  
20 consider whether the following factors support the entry of default  
21 judgment: (1) the possibility of prejudice to the plaintiff; (2)  
22 the merits of a plaintiff's substantive claim; (3) the sufficiency  
23 of the complaint; (4) the sum of money at stake in the action; (5)  
24 the possibility of a dispute concerning material facts; (6) whether  
25 the default was due to excusable neglect; and (7) the strong policy  
26 underlying the Federal Rules of Civil Procedure favoring decisions  
27 on the merits. Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir.  
28 1986).

1 "The general rule of law is that upon default the factual  
2 allegations of the complaint, except those relating to the amount  
3 of damages, will be taken as true." Geddes v. United Fin. Grp.,  
4 559 F.2d 557, 560 (9th Cir. 1977). However, "necessary facts not  
5 contained in the pleadings, and claims which are legally  
6 insufficient, are not established by default." Cripps v. Life Ins.  
7 Co., 980 F.2d 1261, 1267 (9th Cir. 1992).

8

9 **IV. DISCUSSION**

10 **A. Procedural Requirements**

11 Before the Court may consider whether to exercise its  
12 discretion to enter default judgment, it must be satisfied that the  
13 procedural prerequisites, including adequate service of process,  
14 have been met. See, e.g., PepsiCo, Inc. v. California Sec. Cans,  
15 238 F. Supp. 2d 1172, 1175 (C.D. Cal. 2002). In this matter,  
16 Plaintiffs properly served Defendant by substituted service on  
17 October 27, 2012. ECF No. 12 (Proof of Service); see also Fed. R.  
18 Civ. P. 4(e)(2)(B). Further, Plaintiffs served Defendant with the  
19 moving papers and other documents in this matter on March 14, 2013.  
20 Defendant never responded to the original service or the instant  
21 motion. Since Defendant is a resident of San Jose, California, the  
22 Court has personal jurisdiction over him. The Court finds that  
23 Plaintiffs met the procedural prerequisites in this case.

24 **B. Eitel Factors**

25 Since service was proper, the Court turns to the Eitel factors  
26 to determine whether default judgment is appropriate.

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1            **i.            Prejudice Against Plaintiffs**

2            The first factor considers the possibility of prejudice  
3 against the plaintiff if default judgment is not entered. The  
4 Court finds that because Plaintiff may be without recourse for  
5 recovery if default judgment is not entered, this factor weighs in  
6 favor of default judgment. See PepsiCo, 238 F. Supp. 2d at 1177.

7            **ii.            Plaintiffs' Allegations Must State a Claim**

8            The second and third Eitel factors require that a plaintiff's  
9 allegations state a claim upon which it can recover. Since  
10 Plaintiffs have only requested default judgment as to their  
11 copyright claims, Plaintiffs must state a claim for copyright  
12 infringement. To do so, they must establish ownership of a valid  
13 copyright and unauthorized copying of original elements of the  
14 protected work by Defendant. See Feist Publ'ns, Inc. v. Rural Tel.  
15 Serv. Co., 499 U.S. 340, 361 (1991); Shaw v. Lindheim, 919 F.2d  
16 1353, 1356 (9th Cir. 1990). It is the defendant's burden to prove  
17 that he has no knowledge or reason to believe that the work at  
18 issue in a copyright infringement action was protected, 17 U.S.C. §  
19 504(c)(1)(2), and if a plaintiff produces a copyrighted work's  
20 certificate of registration, made before or within five years of  
21 the work's publication, then that certificate is prima facie  
22 evidence of copyright validity, 17 U.S.C. § 410(c).

23            As Plaintiffs allege, they are the exclusive owners or  
24 licensees of exclusive rights under the Copyright Act. Compl. ¶¶  
25 5-9. The rights Plaintiffs control extend to the uses Defendant  
26 has made of the Designs. Id. ¶¶ 13-20. Moreover, Plaintiffs have  
27 provided proof of their exclusive rights under the Copyright Act as  
28 to the Designs. Compl. ¶¶ 5.e, 6.j, 7.d; ECF No. 20 (Decl. of

1 Annie S. Wang ISO Mot. ("Wang Decl.") ¶¶ 8-10<sup>3</sup>; Wang Decl. Exs. J-L  
2 (copyright registration certificates).<sup>4</sup> These facts satisfy the  
3 first requirement for a copyright infringement claim.

4 Second, Plaintiffs provide ample documentation of the  
5 websites, advertisements, products, and other media in which  
6 Defendant has infringed the Designs. See Compl. ¶¶ 1, 14-17;  
7 Peterson Decl. ¶¶ 2-3; Fernandez Decl. ¶¶ 4-11; Reed Decl. ¶ 4;  
8 Diaz Decl. ¶¶ 7-8; Suemori Decl. ¶ 9. A work is considered  
9 "copied" under the Copyright Act when it is "so overwhelmingly  
10 identical that the possibility of independent creation is  
11 precluded." Twentieth Century Fox Film Corp. v. MCA, Inc., 715  
12 F.2d 1237, 1330 (9th Cir. 1983). Defendant's reproductions of the  
13 Designs are indeed virtually identical to the registered Designs  
14 Plaintiffs provide, so the second criterion for a copyright  
15 infringement claim is met here.

16 The Court finds that Plaintiffs' allegations state a claim for  
17 copyright infringement.

18 **iii. The Amount of Money at Stake**

19 As to the fourth Eitel factor, the Court must consider "the  
20 amount of money at stake in relation to the seriousness of  
21 defendant's conduct." N. Cal. Sheet Metal Workers, 2000 U.S. Dist.  
22 LEXIS 19065, at \*4-5. "The Court considers Plaintiff's  
23 declarations, calculations, and other documentation of damages in

24 <sup>3</sup> Plaintiffs' additional declarations -- those of Hailey Peterson,  
25 Mariela Fernandez, Florence Diaz, Yumi Nancy Suemori, and Marsha L.  
26 Reed, all in support of Plaintiffs' motion -- appear seriatem in  
27 ECF No. 20. The Court accordingly refers to them by name, infra,  
instead of providing the full docket number and citation each time.

28 <sup>4</sup> The Court takes judicial notes of the copyright registration  
certificates, Wang Decl. Exs. J-L, under Federal Rule of Evidence  
201.

1 determining if the amount at stake is reasonable." Truong Giang  
2 Corp. v. Twinstar Tea Corp., No. 06-CV-03594, 2007 WL 1545173, at  
3 \*12 (N.D. Cal. May 29, 2007).

4 In their motion, Plaintiffs ask for \$625,000 in statutory  
5 damages, plus interest on the judgment. This would probably be a  
6 substantial burden on Defendant, and requests for such large sums  
7 of money generally counsel against entry of default judgment.  
8 Eitel, 782 F.2d at 1472. However, as discussed below, the Court  
9 adjusts Plaintiffs' requested damages to an appropriate amount  
10 based on deterrence considerations and the evidence in the record.

11 **iv. Likelihood of Dispute over Material Facts**

12 With respect to the fifth Eitel factor, the material facts of  
13 the instant case are not reasonably likely to be subject to  
14 dispute. The record indicates that the nature of Defendant's  
15 business is infringing.

16 **v. Excusable Neglect**

17 For the sixth Eitel factor, there is no support for finding  
18 that Defendant's default is due to excusable neglect. Defendant  
19 was served with the Complaint and Summons in this action over five  
20 months ago and has yet to enter an appearance. Plaintiffs also  
21 served Defendant with their motion for entry of default judgment  
22 and its accompanying papers. In such circumstances, default cannot  
23 be attributed to excusable neglect. See Shanghai Automation  
24 Instrument Co. v. Kuei, 194 F. Supp. 2d 995, 1005 (N.D. Cal. 2001).  
25 This factor supports entry of default judgment.

26 **vi. Policy Favoring Decision on the Merits**

27 "Cases should be decided upon their merits whenever reasonably  
28 possible." Eitel, 782 F.2d at 1472. However, this policy is not

1 dispositive, and "Defendant's failure to answer Plaintiff['s]  
2 Complaint makes a decision on the merits impractical, if not  
3 impossible." PepsiCo, 238 F. Supp. 2d at 11. Termination of a  
4 case before hearing the merits is allowed when a defendant fails to  
5 defend an action. Id. Therefore, in this case, this factor does  
6 not weigh against default judgment.

7 **vii. Summary of Eitel Factors**

8 Considered together, the Eitel factors favor entry of default  
9 judgment. The Court addresses Plaintiffs' requested remedies  
10 below.

11 **C. Remedies**

12 **i. Damages**

13 Plaintiffs seek \$625,000 in statutory damages. Pursuant to  
14 section 504(a) of the Copyright Act, an infringer is liable for  
15 either the plaintiff's actual damages or statutory damages. See 17  
16 U.S.C. § 504(a). A plaintiff seeking statutory damages may recover  
17 between \$750.00 and \$30,000.00 for all infringements of a  
18 copyrighted work. Id. § 504(c). Additionally, if a copyright  
19 owner "sustains the burden of proving, and the court finds, that  
20 infringement was committed willfully, the court in its discretion  
21 may increase the award of statutory damages to a sum of not more  
22 than \$150,000." Id. § 504(c)(2). If a plaintiff chooses to  
23 recover statutory damages, he need not prove actual damages. See  
24 Columbia Pictures Indus., Inc. v. Krypton Broad. of Birmingham,  
25 Inc., 259 F.3d 1186, 1194 (9th Cir. 1997) (citation omitted). When  
26 awarding statutory damages, the Court has broad discretion within  
27 the range provided by statute. Id. Importantly, "[s]tatutory  
28 damages are intended to serve as a deterrent, but that does not

1 justify . . . a windfall." Microsoft Corp. v. Ricketts, No. C 06-  
2 6712 WHA, 2007 WL 1520965, at \*4 (N.D. Cal. 2007).

3 Plaintiffs allege that Defendant's infringement was willful.  
4 Allegations of willful infringement are deemed to be true on  
5 default. See Derek Andrew, Inc. v. Poof Apparel Corp., 528 F.3d  
6 696, 702 (9th Cir. 2008). Despite their apparent entitlement to  
7 increased damages under the Copyright Act's willful infringement  
8 allowance, Plaintiffs ask for \$25,000 for each of the twenty-five  
9 infringed Designs, for a total of \$625,000. See Mot. at 17. Even  
10 so, the \$25,000 per infringement award is "at the high end of the \$  
11 504(c)(1) scale." Disney Enters., Inc. v. San Jose Party Rental,  
12 No. C 10-0511 CRB, 2010 WL 3894190, at \*2 (N.D. Cal. Oct. 1, 2010).  
13 After evaluating the evidence and Plaintiffs' motion, the Court  
14 does not find that Defendant's operation merits such extensive  
15 damages. Per the Court's "wide discretion in determining the  
16 amount of the statutory damages to be awarded, constrained only by  
17 the specified maxima and minima," Harris v. Emus Records Corp., 734  
18 F.2d 1329, 1335 (9th Cir. 1984), the Court awards Plaintiffs  
19 \$10,000 per infringement multiplied by twenty-five Designs for a  
20 total of \$250,000, in recognition of the fact that Plaintiffs do  
21 profit from the use of their copyrights. The Court finds this  
22 amount sufficient for the purposes of deterrence.

23 **ii. Injunctive Relief**

24 Plaintiffs allege that Defendants infringed on their  
25 copyrights by willfully and knowingly manufacturing, distributing,  
26 and selling moonwalks featuring Plaintiffs' Designs, despite  
27 Plaintiffs' cease and desist requests. Compl. ¶¶ 44; Peterson  
28 Decl. ¶ 4. This demonstrates that Plaintiffs' exclusive rights in

1 the Designs have been, and continue to be, violated by the  
2 Defendant. In such circumstances, the Court is authorized to issue  
3 a permanent injunction to prevent or restrain further  
4 infringements. See 17 U.S.C. § 502(a); Sega Enters. Ltd. v.  
5 MAPHIA, 948 F. Supp. 923, 940 (N.D. Cal. 1996) ("Generally, a  
6 showing of copyright infringement liability and the threat of  
7 future violations is sufficient to warrant a permanent  
8 injunction."). In order to receive injunctive relief, a plaintiff  
9 must demonstrate: (1) that it has suffered an irreparable injury;  
10 (2) that remedies available at law are inadequate to compensate for  
11 that injury; (3) that, considering the balance of hardships between  
12 the plaintiff and defendant, a remedy in equity is warranted; and  
13 (4) that the public interest would not be disserved by a permanent  
14 injunction. eBay Inc. v. MercExchange, L.L.C., 547 U.S. 388, 391  
15 (2006).

16 As alleged, Defendant has willfully infringed Plaintiffs'  
17 copyrights. Defendant's failure to respond to the suit, alongside  
18 Plaintiffs' pleadings, suggests that his infringing activities will  
19 not cease absent judicial intervention. See, e.g., Jackson v.  
20 Sturkie, 255 F. Supp. 2d 1096, 1103 (N.D. Cal. 2003). The Court  
21 finds that Plaintiffs will be irreparably harmed if an injunction  
22 is not issued. Therefore, a permanent injunction will be entered.

23 **iii. Interest**

24 The Court finds that Plaintiffs are entitled to post-judgment  
25 interest pursuant to 28 U.S.C. § 1961(a).

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1 **V. CONCLUSION**

2 As explained above, Plaintiffs Disney Enterprises, Inc. and DC  
3 Comics, and Sanrio, Inc.'s motion for entry of default judgment is  
4 GRANTED. Defendant Joey Nguyen a.k.a. Dung Nguyen a.k.a. Duong  
5 Nguyen is ORDERED to pay damages of \$250,000 to Plaintiffs.  
6 Defendant Nguyen is also ordered to pay interest pursuant to 28  
7 U.S.C. § 1961(a).

8 Furthermore, Defendant and his agents, servants, employees and  
9 all persons in active concert and participation with them who  
10 receive actual notice of the injunction are hereby restrained and  
11 enjoined from importing, advertising, displaying, promoting,  
12 marketing, distributing, providing, offering for sale and selling  
13 of products that picture, reproduce, copy or use the likenesses of  
14 or bear a substantial similarity to the designs registered in the  
15 following copyright registrations: Mickey-1 (VA 58-937); Minnie-1  
16 (VA 58-938); Donald Duck (Gp 80-184); Daisy-1 (VA 58-933); Pluto  
17 (Gp 80-192)/(RE 826-536); Chip (R 567-615); Dale (R 567-614); Walt  
18 Disney's Peter Pan Coloring Book #21865 (RE 66-285); Toy Story -  
19 Buzz Lightyear (VAu 337-566), Toy Story - Woody (VAu 337-565), Toy  
20 Story - Rex (VAu 337-568), Toy Story (PA 765-713), Pirates of the  
21 Caribbean: The Curse of the Black Pearl (PA 1-138-412); High School  
22 Musical - Fall/Winter 2007 Style Guide (VA 1-405-075); Ariel 9-9-87  
23 Ruff (VAu 123-355); Flounder (VAu 123-349); Triton (VAu 123-350);  
24 Ruff Sebastian (Vau 123-354), Hannah Montana Branding Guide (VA 1-  
25 403-647); DC Comics Anti-Piracy Guide (TXu 1-080-661); Superman  
26 Style Guide (TX 3-221-758); the Hello Kitty registration (VA 130-  
27 420); KeroKeroKeropi (VA 636-579); Sanrio 2005 Character Guide (VAu  
28 684-322); and Sanrio 2010 Character Guide (VAu 1-078-385).

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Plaintiffs have the responsibility to serve the injunction in such a manner to make it operative in contempt proceedings.

IT IS SO ORDERED.

Dated: May 1, 2013



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UNITED STATES DISTRICT JUDGE