

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

ADOBE SYSTEMS INCORPORATED,  
Plaintiff,  
v.  
SOFTWARE TECH, et al.,  
Defendants.

Case No. 5:14-cv-02140-RMW

**ORDER GRANTING MOTION FOR  
DEFAULT JUDGMENT**

Re: Dkt. Nos. 105, 112

Before the court is a motion for default judgment filed by plaintiff Adobe Systems Inc. against defendant La Boutique Du Softwaretech, Inc., doing business as Software Tech and Software Tech Store (“Software Tech”); defendant Futur-Soft Solutions Corporation (“Futur-Soft”); and defendant Pierre Francis (collectively “defendants”). For the reasons set forth below, the court GRANTS plaintiff’s motion for default judgment.

**I. BACKGROUND**

Adobe makes various software products, including “ACROBAT®, ACROBAT CAPTURE®, ADOBE AUDITION®, ADOBE PREMIERE®, AFTER EFFECTS®, CONTRIBUTE®, CREATIVE SUITE®, CS LIVE®, DREAMWEAVER®, ENCORE®, FIREWORKS®, FLASH®, FLASH BUILDER®, FLASH CATALYST®, ILLUSTRATOR®, INDESIGN®, LIGHTROOM®, PHOTOSHOP®, PRELUDE®, SPEEDGRADE®, and

1 VERSION CUE®.” Dkt No. 54 (First Amended Complaint or “FAC”) ¶ 25. Defendants sell  
2 Adobe products through various websites. Dkt. No. 75-1 (Francis Decl.) ¶ 8. Defendants’ business  
3 model is such that:

4 the majority of Software Tech’s software sales are for a digital  
5 download. Whether given to a customer via digital download or  
6 physical media, a typical transaction between Software Tech and a  
7 customer involved the customer ordering software from the  
8 Software Tech website and downloading the software through the  
9 Software Tech website or receiving an installation disk via UPS,  
FedEx, etc. Software Tech purchased an activation key for the user  
from an approved first-tier or second-tier distributor, provided it to  
the customer, and the customer would then activate the software  
with Adobe using the activation key or serial numbers provided by  
Software Tech.

10 *Id.* ¶ 15. Adobe alleges the defendants’ sales violate Adobe licensing policies, which place various  
11 restrictions on how Adobe serial numbers are distributed to customers. *See* Dkt. No. 64-3 (Draper  
12 Decl.). In essence, Adobe alleges that defendants improperly re-use Adobe serial numbers, thereby  
13 selling the same software product multiple times.

14 **A. The Prior Action and March 22, 2013 Permanent Injunction**

15 Plaintiff previously brought an action against defendants Futur-Soft and Pierre Francis for  
16 similar conduct to that alleged here. *See Adobe Systems Incorporated v. Matthew Rene, et al.*,  
17 Northern District of California Case No. 3:11-cv-03885-CRB (the “Prior Action”). The parties  
18 entered into a Confidential Settlement Agreement to resolve that matter, and the court entered a  
19 Permanent Injunction and Dismissal with Prejudice on March 22, 2013. Dkt. No. 64-8. The  
20 Permanent Injunction prohibits defendants Futur-Soft and Pierre Francis from:

21 [§ 5.a] Infringing Plaintiff’s Properties, either directly or  
22 contributorily, in any manner, including generally, but not limited to  
23 manufacturing, importing, distributing, advertising, selling and/or  
24 offering for sale any unauthorized product which features any of  
25 Plaintiff’s Properties, including, but not limited to, any product sold  
outside specified channels or in a manner which violates the terms  
of Plaintiff’s distribution agreements, including, but not necessarily  
limited to, academic, OEM, or foreign-made versions of Plaintiff’s  
software (collectively “Unauthorized Products”).

26 Dkt. No. 64-8 at ECF p. 45. Thus, the Permanent Injunction prohibits defendant Francis from  
27 dealing in “unauthorized” Adobe products. *Id.*

1                   **B.       This Action and October 9, 2014 Preliminary Injunction**

2                   Plaintiff filed the instant suit on May 9, 2014. On October 7, 2014 the parties stipulated to  
3 a Preliminary Injunction, which the court entered on October 9, 2014. Dkt. No. 32. The  
4 Preliminary Injunction prohibits defendants from:

5                               (a) importing, exporting, downloading, uploading, marketing,  
6 selling, offering for sale, distributing or dealing in any product or  
7 service that uses, or otherwise making any use of, any of Plaintiff's  
8 Trademarks or Copyrights . . .

9                               (b) importing, exporting, downloading, uploading, marketing,  
10 selling, offering for sale, distributing or dealing in any activation  
11 codes, keys, or serial numbers relating to any of Plaintiff's purported  
12 Trademarks or Copyrights . . .

13                              (c) importing, exporting, downloading, uploading, marketing,  
14 selling, offering for sale, distributing or dealing in any product or  
15 service that uses, or otherwise making any use of, any Original  
16 Equipment Manufacturer ("OEM"), educational or academic  
17 ("EDU"), government, foreign-made, Volume Licensing, or Adobe  
18 Employee Software Purchasing Program software, activation keys,  
19 code, or serial numbers relating to Plaintiff's Trademarks or  
20 Copyrights . . . .

21                   *Id.* ¶ 1. The Preliminary Injunction is broader than the Permanent Injunction in that the  
22 Preliminary Injunction prohibits *all* sales of Adobe products, not just "unauthorized" products.

23                   **C.       Violations of Preliminary Injunction and Order Awarding Sanctions**

24                   Adobe uses investigators to purchase Adobe products from third parties and then checks to  
25 ensure the product has been properly licensed. Dkt. No. 64-3. Adobe's investigator made several  
26 purchases of Adobe products from defendants' websites, including purchases after the entry of the  
27 Preliminary Injunction. *Id.* The sales Adobe uncovered violated the Preliminary Injunction and  
28 also violated Adobe's licensing policies. For example, Mr. Draper declares that:

                                  I have analyzed the serial number contained in an email sent on  
December 23, 2014, from sales@thesoftwaretechstore.com to a  
customer. A true and correct copy of this email is attached to the  
Declaration of Haik Moushaghayan as Exhibit C. This serial number  
is for an unauthorized Educational Volume Licensed (TLP) version  
of Adobe Photoshop CS6. This serial number was not generated  
until August 28, 2014, and is not registered to the customer in the  
December 23, 2014, email. It has been activated a total of 15 times.  
None of the users have any business affiliation with each other.  
None of the users appear to be qualified as educational users.

1 *Id.* ¶ 13.

2 In addition, on February 7, 2015, Adobe’s investigator made a purchase of an “Adobe  
3 Acrobat Professional 11 XI – Download Windows Master Key” from the website located at  
4 preloadmypc.com. Draper Decl. ¶ 19, Ex. Z. On February 11, 2015, Adobe received an email from  
5 defendants, through the email address sales@preloadmypc.com, providing a serial number for the  
6 investigator’s purchase. *Id.* ¶ 19, Ex. AA. This serial number was for an unauthorized Volume  
7 Licensing (TLP) product sold outside of Adobe’s licensing restrictions. *Id.* at ¶ 19.

8 In an order dated November 10, 2015, this court found that defendants had violated the  
9 preliminary injunction, and the court awarded Adobe \$1,900,000 in sanctions. Dkt. No. 99 at 10.  
10 In calculating this amount, the court reasoned that defendants had unlawfully distributed license  
11 keys that were used in over 17,000 activations of 19 different copyrighted Adobe software  
12 programs. *Id.* The court’s award was based on \$100,000 in statutory copyright damages for each  
13 of the 19 infringed works.

14 **D. Motion for Default Judgment**

15 On November 10, 2015, this court found defendants Software Tech and Futur-Soft in  
16 default because their counsel withdrew, and corporations cannot represent themselves without an  
17 attorney in federal court. Dkt. No. 100. On February 26, 2016, this court adopted the assigned  
18 magistrate judge’s recommendation found defendant Francis in default for his continued failure to  
19 schedule, participate in, or produce employee witnesses for deposition. Dkt. No. 109.

20 Plaintiff filed the instant motion for default judgment against all defendants on January 11,  
21 2016. Dkt. No. 105. In addition to the \$1,900,000 already awarded, plaintiff seeks: (1) an  
22 additional \$200,000 in copyright statutory damages for works that were allegedly distributed  
23 before this court entered a preliminary injunction; (2) \$4,400,000 in trademark statutory damages;  
24 and (3) a permanent injunction. Defendants did not file an opposition. On February 26, 2016, this  
25 court requested supplemental briefing on whether an award of statutory damages for both  
26 copyright and trademark infringement would constitute an impermissible double recovery. Dkt.  
27 No. 110. The court also requested additional factual support for plaintiff’s damages claims. On

28

1 March 11, 2016, plaintiff filed a supplemental brief as well as a declaration from Mr. Draper and  
2 documentation regarding the amount of profit Adobe would have expected to make on the  
3 infringing sales. Dkt. Nos. 112, 111-3.

4 **II. ANALYSIS**

5 **A. Whether Default Judgment is Appropriate**

6 After entry of default, courts may, in their discretion, enter default judgment. *See* Fed. R.  
7 Civ. P. 55(b)(2); *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980). In exercising its  
8 discretion to enter default judgment, the court may consider:

- 9 (1) the possibility of prejudice to the plaintiff, (2) the merits of  
10 plaintiff's substantive claim, (3) the sufficiency of the complaint, (4)  
11 the sum of money at stake in the action; (5) the possibility of a  
12 dispute concerning material facts; (6) whether the default was due to  
excusable neglect, and (7) the strong policy underlying the Federal  
Rules of Civil Procedure favoring decisions on the merits.

13 *Eitel v. McCool*, 782 F.2d 1470, 1471–72 (9th Cir. 1986). In considering these factors, all factual  
14 allegations in the plaintiff's complaint are taken as true, except those relating to damages. *See Fair*  
15 *Hous. of Marin v. Combs*, 285 F.3d 899, 906 (9th Cir. 2002); *TeleVideo Sys., Inc. v. Heidenthal*,  
16 826 F.2d 915, 917–18 (9th Cir. 1987).

17 **1. Possibility of Prejudice to Plaintiff**

18 The court recognizes the possibility that plaintiff will be prejudiced if default judgment is  
19 not entered against defendant. Denying judgment against a defendant who does not participate in  
20 litigation leaves the plaintiff with limited recourse for recovery, such as filing a time-intensive  
21 motion for summary judgment. *See Atain Specialty Ins. Co. v. N. Bay Waterproofing, Inc.*, No.  
22 14-CV-04056-RMW, 2015 WL 428161, at \*4 (N.D. Cal. Jan. 30, 2015). Thus, the first factor  
23 weighs in favor of granting default judgment.

24 **2. Substantive Merits and the Sufficiency of the Complaint**

25 The next two *Eitel* factors, the substantive merits of plaintiff's claim and the sufficiency of  
26 the complaint, require that plaintiff's allegations "state a claim on which the [plaintiff] may  
27 recover." *Danning v. Lavine*, 572 F.2d 1386, 1388 (9th Cir. 1978).

**a. Copyright Claims**

1 “To establish copyright infringement, a plaintiff must prove two elements: ‘(1) ownership  
2 of a valid copyright, and (2) copying of constituent elements of the work that are original.’” *L.A.*  
3 *Printex Indus., Inc. v. Aeropostale, Inc.*, 676 F.3d 841, 846 (9th Cir. 2012) (quoting *Feist Publ'ns,*  
4 *Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 361 (1991)). A certificate of registration is “prima facie  
5 evidence of the validity of the copyright and of the facts stated in the certificate.” 17 U.S.C.  
6 § 410(c). Here, plaintiff has alleged its ownership in 21 registered, copyrighted works. FAC ¶ 30.  
7 A certificate of registration is prima facie evidence of the validity of the copyright. Moreover,  
8 plaintiff has alleged and submitted evidence that defendants distributed unauthorized copies of  
9 plaintiff’s copyrighted works. FAC ¶¶ 44, 46, 58; Dkt. No. 112-1. These allegations are sufficient  
10 to establish copyright infringement.

**b. Trademark Claims**

11  
12 To state a claim for trademark infringement, a plaintiff must allege that (1) it has a valid,  
13 protectable trademark, and (2) that defendants’ use of the mark in commerce is likely to cause  
14 confusion. *See* 15 U.S.C. § 1114(1)(a); *Applied Info. Scis. Corp. v. eBay, Inc.*, 511 F.3d 966, 969  
15 (9th Cir. 2007). The claim for false designation of origin or unfair competition has the same  
16 elements and follows an identical analysis in this case.<sup>1</sup> *See* 15 U.S.C. § 1125(a); *Brookfield*  
17 *Comm'ns, Inc. v. W. Coast Entm't Corp.*, 174 F.3d 1036, 1047 n.8 (9th Cir. 1999). To constitute  
18 trademark infringement, use of a mark must be likely to confuse an “appreciable number” of  
19 “reasonably prudent” consumers. *Entrepreneur Media, Inc. v. Smith*, 279 F.3d 1135, 1151 (9th  
20 Cir. 2002). In assessing likelihood of confusion, courts consider:

- 21 1. The strength of the plaintiff’s trademark;
- 22 2. The similarity of the marks;
- 23 3. The proximity or relatedness of the goods or services;
- 24 4. The defendants’ intent in selecting the marks;
- 25 5. Evidence of actual confusion;
- 26 6. The marketing channels used;
- 27 7. The likelihood of expansion of product lines; and,
- 28 8. The degree of care consumers are likely to exercise.

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<sup>1</sup> Plaintiff’s state law claims are predicated on defendants’ alleged infringement of plaintiff’s trademarks and copyrights. *See* FAC ¶¶ 98-116.

1 *Id.* at 1140 (citing *AMF, Inc. v. Sleekcraft Boats*, 599 F.2d 341, 348–49 (9th Cir. 1979)).  
 2 “Although some factors—such as the similarity of the marks and whether the two companies are  
 3 direct competitors—will always be important, it is often possible to reach a conclusion with  
 4 respect to likelihood of confusion after considering only a subset of the factors.” *Brookfield*, 174  
 5 F.3d at 1054.

6 Here, plaintiff has stated a claim for trademark infringement. Plaintiff has alleged  
 7 ownership of 22 registered trademarks. FAC ¶ 29. Moreover, plaintiff has alleged that defendants  
 8 used plaintiff’s marks in commerce by distributing software bearing plaintiff’s marks without  
 9 authorization. FAC ¶¶ 43-60. Plaintiff has also adequately alleged a likelihood of confusion.  
 10 While plaintiff’s allegations are not mark-specific, plaintiff has alleged that its marks “have been  
 11 prominently placed in the minds of the public” as a result of “Plaintiff’s efforts, the quality of  
 12 Plaintiff’s products, and the promotion and word of mouth buzz.” FAC ¶ 27. Moreover,  
 13 defendants’ accused products are copies of Adobe products, with identical marks, placed in direct  
 14 competition with authorized Adobe software. *See id.* ¶¶ 43-60. “A party claiming trademark  
 15 infringement need not demonstrate that the alleged infringer intended to deceive consumers,” *M2*  
 16 *Software, Inc. v. Madacy Entm’t*, 421 F.3d 1073, 1085 (9th Cir. 2005), but here, defendants’ intent  
 17 may be inferred from the fact that defendants knowingly used marks identical to those of plaintiff.  
 18 Plaintiff also submitted evidence that some of defendants’ customers were confused into thinking  
 19 that they had purchased authorized Adobe software. Dkt. No. 64-6 Ex. A & F. The court need not  
 20 address the remaining *Sleekcraft* factors to conclude that plaintiff has adequately established  
 21 likelihood of confusion, at least as to some of plaintiff’s marks.

22 For the reasons stated above, plaintiff has adequately established trademark infringement.

23 **c. Trademark Dilution Claims**

24 To state a claim for trademark dilution, a plaintiff must allege that “(1) the mark is famous  
 25 and distinctive; (2) the defendant is making use of the mark in commerce; (3) the defendant’s use  
 26 began after the mark became famous; and (4) the defendant’s use of the mark is likely to cause  
 27 dilution by blurring or dilution by tarnishment.” *Jada Toys, Inc. v. Mattel, Inc.*, 518 F.3d 628, 634

1 (9th Cir. 2007) (citing 15 U.S.C. § 1125(c)).

2 Plaintiff has adequately established trademark dilution. Plaintiff has alleged that Adobe-  
3 Branded Software and the associated marks thereto are famous in the United States and throughout  
4 the world. FAC ¶ 27. “Registration alone may be sufficient in an appropriate case to satisfy a  
5 determination of distinctiveness.” *Lahoti v. VeriCheck, Inc.*, 586 F.3d 1190, 1199 (9th Cir. 2009).  
6 As noted above, plaintiff has alleged that defendants used plaintiff’s marks in commerce by  
7 distributing software bearing plaintiff’s marks without authorization. FAC ¶¶ 43-60. Plaintiff has  
8 alleged that defendants’ use of the marks began after the marks became famous. *Id.* ¶ 61. Plaintiff  
9 has also submitted evidence that defendants have tarnished Adobe’s marks by selling unauthorized  
10 Adobe software that will not work. Dkt. No. 64-6 Ex. A & F.

11 **3. Sum of Money at Stake**

12 In analyzing the fourth *Eitel* factor, the sum of money at stake, “the court considers [the]  
13 plaintiff’s declarations, calculations, and other documentation of damages in determining if the  
14 amount at stake is reasonable.” *Truong Giang Corp. v. Twinstar Tea Corp.*, No. 06-03594 JSW,  
15 2007 WL 1545173, at \* 12 (N.D.Cal. May 29, 2007). Default judgment is disfavored when a large  
16 sum of money is involved or the damages sought are unreasonable in light of the defendant’s  
17 actions. *See id.* Where a plaintiff’s request for damages is excessive, the court may mitigate the  
18 impact of this factor by reducing the amount awarded. *See, e.g., Joe Hand Promotions, Inc. v.*  
19 *Burleson*, No. 11–00499, 2011 WL 4905631, at \*4 (E.D. Cal. Oct. 14, 2011). Here, the court finds  
20 plaintiff’s request for \$4,600,000 in statutory damages in addition to the \$1,900,000 already  
21 awarded unreasonable in light of the circumstances of the case. However, because, as discussed  
22 below, the court awards plaintiff a smaller sum, this factor does not weigh strongly against the  
23 entry of default judgment.

24 **4. Remaining Factors**

25 The remaining *Eitel* factors also support default judgment. There is no genuine issue of  
26 material fact because the allegations in the complaint are taken as true. Moreover, there is no  
27 evidence that defendant’s failure to participate in the litigation is due to excusable neglect. Finally,



1 although the policy favoring decisions on the merits weighs against entering default judgments,  
2 that policy alone is not enough to prevent the entry of judgment here.

3 \* \* \*

4 On balance, the court finds that the seven *Eitel* factors favor default judgment.

5 **B. Damages**

6 As noted above, in addition to the \$1,900,000 already awarded, plaintiff seeks: (1)  
7 \$100,000 in copyright statutory damages for each of two works that were distributed before this  
8 court entered a preliminary injunction, a total of \$200,000 in additional copyright damages; and  
9 (2) \$200,000 in trademark statutory damages for each of 22 infringed marks, a total of \$4,400,000  
10 in additional trademark damages. Alternatively, plaintiff requests \$24,966,618.70 in lost profits  
11 based on an alleged 53,731 activations of Adobe software. Dkt. No. 112 at 4.

12 The court finds that plaintiff's request for lost profits is not adequately supported. In  
13 support of its claim, plaintiff submitted a list of products that defendants distributed without  
14 authorization, including the number of units distributed, the retail price of each product, and  
15 Adobe's purported profit margin on each product. Dkt. No. 111-3. A fatal flaw with plaintiff's  
16 evidence is that it assumes, without any support, that but for defendants' infringement, Adobe  
17 would have sold 53,371 additional software units at full retail price. However, plaintiff's  
18 complaint accuses defendants of, among other things, selling unauthorized academic and  
19 "Transactional Licensing Program" editions of Adobe software, which, the complaint explains, are  
20 offered at steep discounts. FAC ¶¶ 32, 33, 37. At least because the price and profit figures filed by  
21 plaintiff do not distinguish between retail and discounted licenses, the court finds them unreliable  
22 for calculating lost profits. Thus, the court turns to statutory damages.

23 A "district court has 'wide discretion in determining the amount of statutory damages to be  
24 awarded, constrained only by the specified maxima and minima'" of the relevant statutes. *Los*  
25 *Angeles News Serv. v. Reuters Television Int'l, Ltd.*, 149 F.3d 987, 996 (9th Cir. 1998) (quoting  
26 *Harris v. Emus Records Corp.*, 734 F.2d 1329, 1335 (9th Cir. 1984)). Under the Copyright Act, a  
27 court, in its discretion, can award between \$750 and \$30,000 in statutory damages per copyright

1 infringed. 17 U.S.C. § 504(c)(1). Enhanced damages of up to \$150,000 per copyright infringed  
2 may be granted on a finding of willful infringement. *Id.* § 504(c)(2). For trademark infringement  
3 involving the use of a counterfeit mark, a plaintiff may recover statutory damages between \$1,000  
4 and \$200,000 per infringed mark, “as the court considers just.” 15 U.S.C. 1117(c). A court may  
5 also award enhanced damages of up to \$2,000,000 per counterfeit mark on a finding of willful  
6 infringement, again, “as the court considers just.” *Id.*

7         After plaintiff filed its initial motion for a default judgment, this court requested  
8 supplemental briefing on whether an award of statutory damages for both copyright and trademark  
9 infringement would constitute an impermissible double recovery. In response, plaintiff cited  
10 *Nintendo of America, Inc. v. Dragon Pacific International*, 40 F.3d 1007, 1011 (9th Cir.1994) for  
11 the proposition that “when a defendant violates both the Copyright Act and the Lanham Act, an  
12 award of both types of damages is appropriate.” In *Nintendo*, the court awarded statutory damages  
13 under copyright law in conjunction with an award of actual damages under trademark law. While  
14 *Nintendo* did not explicitly hold that courts can award statutory damages under both copyright and  
15 trademark law for the same underlying acts, plaintiff cites several district courts cases allowing  
16 separate statutory damages awards under copyright and trademark law. Dkt. No. 112 at 2-3.

17         None of the cases plaintiff has cited supports the award of the \$4,600,000 that plaintiff  
18 seeks (in addition to the \$1,900,000 already awarded) as a default judgment. *See Microsoft Corp.*  
19 *v. Nop*, 549 F. Supp. 2d 1233, 1238 (E.D. Cal. 2008) (awarding “\$100,000 for each of seven  
20 trademarks infringed and \$30,000 for each of nine copyrights infringed, for a combined total of  
21 \$970,000”); *Philip Morris USA, Inc. v. Castworld Prods., Inc.*, 219 F.R.D. 494, 501-02 (C.D. Cal.  
22 2003) (awarding \$2,000,000 in trademark statutory damages for the importation of “8,000,000  
23 counterfeit cigarettes, having a street value of millions of dollars”); *Tiffany Inc. v. Luban*, 282 F.  
24 Supp. 2d 123, 125 (S.D.N.Y. 2003) (awarding \$550,000 in trademark statutory damages for sale  
25 of “28 separate counterfeit Tiffany items . . . each of which allegedly infringes upon at least four  
26 Tiffany trademarks”); *Microsoft Corp. v. McGee*, 490 F. Supp. 2d 874, 882 (S.D. Ohio 2007)  
27 (awarding “\$100,000 for each of five trademarks at issue and \$30,000 for [each of] seven

1 copyrights at issue, for a total of \$710,000”); *Microsoft Corp. v. Sellers*, 411 F. Supp. 2d 913, 921-  
2 22 (E.D. Tenn. 2006) (awarding “\$100,000 for each of [the] four trademarks at issue and \$30,000  
3 for [the] two copyrights at issue, for a total of \$460,000”). In *Microsoft Corp. v. Ricketts*, No.  
4 C06-06712 WHA, 2007 WL 1520965, at \*5 (N.D. Cal. May 24, 2007), also cited by plaintiff, the  
5 court awarded “statutory damages in the amount of \$1500 per copyright infringed and \$1000 per  
6 trademark infringed, for a total of \$12,500.” Judge Alsup specifically noted: “It is true that  
7 Microsoft could not conduct discovery to determine its damages, but that in itself simply does not  
8 support levying a statutory damages award in excess of three million dollars.” *Id.*

9 In the instant case, the court finds that the \$4,600,000 plaintiff seeks would constitute an  
10 improper windfall to plaintiff. With respect to plaintiff’s copyright claims, consistent with this  
11 court’s order awarding sanctions, the court will award \$100,000 in copyright statutory damages  
12 per infringed work, for a total of \$200,000. With respect to plaintiff’s trademark claims, the court  
13 notes that plaintiff only cited evidence of actual of confusion as to two of its marks. Dkt. No. 64-6  
14 Ex. A & F (correspondence with consumers reflecting activation issues with purchases from  
15 defendants of Adobe Photoshop CS6 and Adobe CS5.5 Production Premium). Moreover, the  
16 complaint’s allegations of likelihood of confusion were not specific to particular marks.  
17 Accordingly, the court thinks it just to award \$100,000 in trademark statutory damages for each of  
18 the two infringed marks for which plaintiff showed actual confusion. Thus, in total, the court  
19 awards \$400,000 in statutory damages for defendants’ copyright and trademark infringement, in  
20 addition to the \$1,900,000 already awarded in sanctions. These damages, coupled with the  
21 permanent injunction granted against defendant, will adequately serve the purpose of deterrence.

22 **C. Permanent Injunction**

23 Under 17 U.S.C. § 502(a), a court may enter an injunction against a defendant to prevent  
24 future copyright infringement. Similarly, injunctive relief is available to prevent future trademark  
25 infringement under the Lanham Act. 15 U.S.C. § 1116(a); 15 U.S.C. § 1125(c). Here, defendants  
26 have repeatedly infringed plaintiff’s copyrights and trademarks despite prior orders issued against  
27 them. Plaintiff will suffer irreparable injury if ongoing infringement is not enjoined. Furthermore,

1 defendants' refusal to participate in this action makes it difficult for plaintiff to prevent further  
2 infringement. The court is unaware of any reason why an injunction would impose an undue  
3 hardship on defendants or harm the public interest. Accordingly, injunctive relief is warranted.  
4 Plaintiff's motion for a permanent injunction is granted as described below.

5 **III. ORDER**

6 For the foregoing reasons, plaintiff's motion for default judgment is GRANTED. Plaintiff  
7 is awarded \$400,000 in statutory damages, in addition to the \$1,900,000 already awarded in  
8 sanctions, for a total of \$2,300,000. Plaintiff's request for a permanent injunction is GRANTED  
9 on the following terms:

10 Defendants and any person or entity acting in concert with, or at its direction, including  
11 any and all officers, directors, agents, servants, employees, and any others over which it may  
12 exercise control, are hereby restrained and enjoined from engaging in, directly or indirectly, or  
13 authorizing or assisting any third party to engage in, any of the following activities:

14 1. importing, exporting, downloading, uploading, marketing, selling, offering for sale,  
15 distributing or dealing in any product or service that uses, or otherwise making any use of, any of  
16 Plaintiff's Trademarks or Copyrights, including but not limited to the ADOBE®, ACROBAT®,  
17 ACROBAT CAPTURE®, ADOBE AUDITION®, ADOBE PREMIERE®, AFTER EFFECTS®,  
18 CONTRIBUTE®, CREATIVE SUITE®, CS LIVE®, DREAMWEAVER®, ENCORE®,  
19 FIREWORKS®, FLASH®, FLASH BUILDER®, FLASH CATALYST®, ILLUSTRATOR®,  
20 INDESIGN®, LIGHTROOM®, PHOTOSHOP®, PRELUDE®, SPEEDGRADE®, and  
21 VERSION CUE® marks and works, and/or any Intellectual Property that is confusingly or  
22 substantially similar to, or that constitutes a colorable imitation of, any of Plaintiff's Trademarks  
23 and Copyrights, whether such use is as, on, in or in connection with any trademark, service mark,  
24 trade name, logo, design, Internet use, website, domain name, meta tags, advertising, promotions,  
25 solicitations, commercial exploitation, television, web-based or any other program, or any product  
26 or service, or otherwise. A list of Plaintiff's registered trademarks is attached and incorporated by  
27 reference herein as Exhibit A (collectively referred to as "Plaintiff's Trademarks"). A list of

1 Plaintiff's registered copyrights is attached and incorporated herein as Exhibit B (collectively  
2 referred to as "Plaintiff's Copyrights");

3 2. importing, exporting, downloading, uploading, marketing, selling, offering for sale,  
4 distributing or dealing in any activation codes, keys, or serial numbers relating to any of Plaintiff's  
5 purported Trademarks or Copyrights and/or any Intellectual Property that is confusingly or  
6 substantially similar to, or that constitutes a colorable imitation of, any of Plaintiff's Trademarks  
7 or Copyrights;

8 3. importing, exporting, downloading, uploading, marketing, selling, offering for sale,  
9 distributing or dealing in any product or service that uses, or otherwise making any use of, any  
10 Original Equipment Manufacturer ("OEM"), educational or academic ("EDU"), government,  
11 foreign-made, Volume Licensing, or Adobe Employee Software Purchasing Program software,  
12 activation keys, code, or serial numbers relating to Plaintiff's Trademarks or Copyrights;

13 4. maintaining active for downloading purposes any servers, computer terminals and/or  
14 portals, or any electronic storage medium containing any of Plaintiff's Trademarks and Copyrights  
15 and/or any Intellectual Property that is confusingly or substantially similar to, or that constitutes a  
16 colorable imitation of, any of Plaintiff's Trademarks or Copyrights;

17 5. performing or allowing others employed by or representing them, or under their control,  
18 to perform any act or thing which is likely to injure Plaintiff, any of Plaintiff's Trademarks or  
19 Copyrights and/or Plaintiff's business reputation or goodwill, including making disparaging,  
20 negative, or critical comments regarding Plaintiff or its products;

21 6. engaging in any conduct that falsely represents that, or is likely to confuse, mislead, or  
22 deceive purchasers, customers, or members of the public to believe that Defendants itself is  
23 connected with, is in some way sponsored by or affiliated with, purchases products from, or  
24 otherwise has a business relationship with Plaintiff;

25 7. hiding, disposing of, destroying, moving, relocating, or transferring any and all products,  
26 advertising, promotional materials, or packaging bearing and/or comprised of any of Plaintiff's  
27 Trademarks or Copyrights and/or any Intellectual Property that is confusingly or substantially

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1 similar to, or that constitutes a colorable imitation of, any of Plaintiff's Trademarks or Copyrights;  
2 8. hiding, disposing of, destroying, moving, relocating, or transferring any and all business  
3 records, specifically including any accountings, sales and supply logs, customer journals, ledgers,  
4 invoices, and purchase orders, concerning Defendants' import, export, download, upload,  
5 marketing, sale, offer for sale, distribution or dealing in any product or service that uses, or  
6 otherwise making any use of, any of Plaintiff's Trademarks or Copyrights and/or any Intellectual  
7 Property that is confusingly or substantially similar to, or that constitutes a colorable imitation of,  
8 any of Plaintiff's Trademarks or Copyrights;

9 9. hiding, disposing of, destroying, moving, relocating, or transferring any and all  
10 computers, tablets, servers, blade, electronic storage devices, data, meta data, electronic storage  
11 media, disks, CDs, DVDs, drives, flash drives, hard drives, or related computer systems that  
12 include, denote, contain, possess, maintain and/or are used to transfer any software, computer  
13 source code, computer information, decrypted code, directories, files, libraries, and any related  
14 data that relate (either directly or indirectly) to Plaintiff's Trademarks or Copyrights; and

15 10. using any Internet domain name that includes any of Plaintiff's Trademarks or  
16 Copyrights.

17 Defendants shall be restrained and enjoined from transferring or disposing of any money or  
18 other tangible assets of Defendants unless further ordered by this court.

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20 **IT IS SO ORDERED.**

21 Dated: September 8, 2016

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Ronald M. Whyte  
United States District Judge