

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
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

BMW OF NORTH AMERICA LLC, et al.,
Plaintiffs,
v.
K VIP AUTO BODY, et al.,
Defendants.

Case No. [5:17-cv-00543-EJD](#)

**ORDER ADOPTING REPORT AND
RECOMMENDATION; DEFAULT
JUDGMENT**

Re: Dkt. No. 55

Presently before the Court is Magistrate Judge Kim’s Report and Recommendation to dismiss Defendant K VIP Auto Body and to enter default judgment against Guo Yong Chen, Jingjing Deng a/k/a Tina Deng, Shao Chun Chen, and Fen Deng a/k/a Andy Deng (collectively referred to as “Individual Defendants”) (Dkt. No. 55). To date, no objection to the Report and Recommendation has been filed. Having conducted a *do novo* review of the Report and Recommendation pursuant to 28 U.S.C. §636 and Fed.R.Civ.P. 72(b), the Court ADOPTS the Report and Recommendation (Dkt. No. 55) in its entirety and orders as follows:

- 1. Defendant K VIP Auto Body is DISMISSED from this action.
- 2. Plaintiffs’ motion for default judgment against the Individual Defendants is

GRANTED. Plaintiffs are AWARDED \$200,000 in statutory damages pursuant to 15 U.S.C. § 1117(c). Further, pursuant to 15 U.S.C. § 1116(a), the Individual Defendants and their agents, representatives, and all persons acting in concert with them, are PERMANENTLY ENJOINED from:

- a. The import, export, manufacture, reproduction, assembly, use, acquisition, purchase, offer, sale, transfer, brokerage, consignment, distribution, shipment, licensing, development,

1 display, delivery, marketing, advertising or promotion of any counterfeit products bearing the
2 BMW®, M2®, M3®, M5®, M6®, MINI®, MINI COOPER®, the BMW® blue/white/black
3 circle colored mark, the BMW® white circle mark, the BMW® black circle mark, the MINI®
4 wing emblem, the ///M® colored striping mark, the ///M® non-colored striping mark, and the
5 stylized S® mark, specifically including but not limited to any air caps, valve stem caps, badges,
6 key chains, automobile parts or accessories, and any other unauthorized merchandise bearing any
7 of Plaintiffs' Trademarks (including any non-genuine reproduction, counterfeit, copy or colorable
8 imitation thereof);

9 b. The import, export, manufacture, reproduction, assembly, use, acquisition, purchase,
10 offer, sale, transfer, brokerage, consignment, distribution, shipment, licensing, development,
11 display, delivery, marketing, advertising or promotion of any counterfeit products bearing the
12 BMW®, M2®, M3®, M5®, M6®, MINI®, MINI COOPER®, the BMW® blue/white/black
13 circle colored mark, the BMW® white circle mark, the BMW® black circle mark, the MINI®
14 wing emblem, the ///M® colored striping mark, the ///M® non-colored striping mark, and the
15 stylized S® mark, specifically including but not limited to any air caps, valve stem caps, badges,
16 key chains, automobile parts or accessories, and any other product which infringes or dilutes any
17 of Plaintiffs' Trademarks, trade name, and/or trade dress, including but not limited to any of
18 Plaintiffs' Trademarks;

19 c. The unauthorized use, in any manner whatsoever, of any of Plaintiffs' Trademarks, trade
20 names and/or trade dress, including but not limited to BMW®, M2®, M3®, M5®, M6®, MINI®,
21 MINI COOPER®, the BMW® blue/white/black circle colored mark, the BMW® white circle
22 mark, the BMW® black circle mark, the MINI® wing emblem, the ///M® colored striping mark,
23 the ///M® non-colored striping mark, and the stylized S® mark, any variants, colorable imitations,
24 translations and/or simulations thereof, and/or any items that are confusingly similar thereto,
25 including specifically:

- 26 i. on or in conjunction with any product or service; and
- 27 ii. on or in conjunction with any advertising, promotional materials, labels,

1 hangtags, packaging, or containers;

2 d. The use of any trademark, trade name, or trade dress that falsely represents, or is likely
3 to confuse, mislead or deceive purchasers, customers, or members of the public to believe that
4 unauthorized product imported, exported, manufactured, reproduced, distributed, assembled,
5 acquired, purchased, offered, sold, transferred, brokered, consigned, distributed, stored, shipped,
6 marketed, advertised and/or promoted by Defendants originate from Plaintiffs, or that said
7 merchandise has been sponsored, approved, licensed by, or associated with Plaintiffs or is, in
8 some way, connected or affiliated with Plaintiffs;

9 e. Engaging in any conduct that falsely represents that, or is likely to confuse, mislead, or
10 deceive purchasers, customers, or members of the public to believe that Defendants are connected
11 with, or are in some way sponsored by or affiliated with Plaintiffs, purchases product from or
12 otherwise has a business relationship with Plaintiffs; and/or

13 f. Affixing, applying, annexing, or using in connection with the manufacture, distribution,
14 advertising, sale, and/or offering for sale or other use of any goods, a false description or
15 representation, including words or symbols, tending to falsely describe or represent such goods as
16 being those of Plaintiffs.

17 **IT IS SO ORDERED.**

18
19 Dated: May 30, 2018



EDWARD J. DAVILA
United States District Judge