

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

HOME INSTEAD, INC., a)	
Nebraska corporation,)	
)	
Plaintiff,)	8:11CV89
)	
v.)	
)	
RAEGAN J. LEMAIRE, an)	MEMORANDUM OPINION
individual, and LEMAIRE)	
ENTERPRISES, LLC, a)	
Louisiana limited liability)	
company,)	
)	
Defendants.)	
)	

This matter is before the Court on plaintiff’s motions for default judgment against Raegan J. LeMaire (Filing No. [11](#)) and LeMaire Enterprises, LLC (Filing No. [12](#)). Defendants have failed to appear, plead or otherwise defend as provided in the Federal Rules of Civil Procedure. The Court notes a clerk’s default was entered against both defendants (Filing No. [10](#)). After reviewing the pleadings and the motion, the Court finds as follows:

Count I - Breach of Contract. Judgment will be entered for Home Instead. Damages, costs and injunction relief are set forth below.

Count II - Breach of the Covenant of Good Faith and Fair Dealing. Judgment will be entered for Home Instead. Damages, costs and injunction relief are set forth below.

Count III - Deceptive Trade Practices. The Court finds that defendants engaged in unfair competition in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a). Home

Instead is entitled to a permanent injunction prohibiting defendants from engaging in the wrongful conduct described in the complaint as well as damages and costs. Under the circumstances of the case, the proper measure of damages is lost royalties, calculated by taking the average past monthly royalty payment and multiplying it by the number of months that defendants violated the Lanham Act. The Court further finds that defendants' willful and intentional conduct in violation of the Lanham Act constitutes exceptional circumstances entitling Home Instead to treble damages and an award of attorney fees. 15 U.S.C. § 1117(a). A separate order will be entered in accordance with this memorandum opinion and a permanent injunction will also be entered separately.

DATED this 12th day of July, 2011.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court