

**FILED
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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

**U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
LONG ISLAND OFFICE**

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CURVES INTERNATIONAL, INC.,

Plaintiff,

ORDER
11-cv-2986 (ADS)(WDW)

-against-

DERRICK NEGRON,

Defendant.

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APPEARANCES:

Chronakis Siachos, LLC

Attorneys for the plaintiff

5 Penn Plaza

19th Floor

New York, NY 10001

By: Peter G. Siachos, Esq., of Counsel

NO APPEARANCE:

Derrick Negron

SPATT, District Judge.

The Plaintiff Curves International, Inc. (“Curves”) commenced this action on or about June 22, 2011, asserting various federal and state claims including and trademark infringement and breach of contract. The Clerk of the Court noted the default of the Defendant Derrick Negron on August 1, 2011. The Plaintiff thereafter moved for a default judgment against Defendant Derrick Negron on September 29, 2011, seeking both monetary and injunctive relief. On October 21, 2011, this Court referred the motion for default judgment to United States Magistrate Judge William D. Wall for a recommendation as to whether the motion

should be granted and whether injunctive relief and attorneys' fees and costs should be awarded to the Plaintiff. The case was then transferred to United States Magistrate Judge Gary R. Brown.

On August 31, 2012, Judge Brown issued a thorough Report recommending that the Plaintiff's motion for default judgment be granted; that the Plaintiff be awarded \$15,000 in attorneys' fees and \$573.10 in costs, for the aggregate sum of \$15,573.10; and that the Plaintiff's application for a permanent injunction be denied. With regard to the request for injunctive relief, Judge Brown found that the Plaintiff had failed to provide any evidence that Negron had violated or had any intention of violating the non-compete covenant in their franchise agreement, thus failing to demonstrate that the requisite imminent harm exists. As for attorneys' fees, Judge Brown found that the attorneys' fees application was riddled with inaccuracies, insufficiencies and inconsistencies, in that the Plaintiff failed to indicate to the Court the experience of the attorneys involved with this litigation; misstated a partner's billing rate on numerous invoice entries; and overcharged for legal work provided by students. Thus, Judge Brown recommended that the Plaintiff be awarded \$15,000 in attorneys' fees, rather than the sum requested. Finally, the Court found the \$573.10 in requested costs to be reasonable and appropriate.

In reviewing a report and recommendation, a court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). "To accept the report and recommendation of a magistrate, to which no timely objection has been made, a

district court need only satisfy itself that there is no clear error on the face of the record.” Wilds v. United Parcel Serv., 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003) (citing Nelson v. Smith, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985)). The Court has reviewed Judge Brown’s Report and finds it be persuasive and without any legal or factual errors. There being no objection to Judge Brown’s Report, the Court adopts the Report.

For the foregoing reasons, it is hereby:

ORDERED that Judge Brown’s Report and Recommendation is adopted in its entirety, and it is further

ORDERED that the Clerk of the Court is directed to enter a default judgment against the Defendant in the amounts recommended by Judge Brown, namely \$15,573.10 in attorneys’ fees and costs; and it is further

ORDERED that the Plaintiff’s request for a permanent injunction is denied; and it is further

ORDERED that the Clerk of the Court is respectfully directed to mark this case as closed.

SO ORDERED.

Dated: Central Islip, New York
September 28, 2012

/s/ Arthur D. Spatt
ARTHUR D. SPATT
United States District Judge